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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO
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HON. STEVEN H. RODDA, JUDGE, DEPARTMENT 44/1
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LAURENCE LUCIER and LAURIE LUCIER, Plaintiffs,

-vs- No. 02AS01909

PHILIP MORRIS INCORPORATED, and, R.J. REYNOLDS TOBACCO COMPANY Defendants.

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REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS AT JURY TRIAL

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THURSDAY, NOVEMBER 7, 2002

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THURSDAY, NOVEMBER 7, 2002
(Morning Session)
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The matter of LAURENCE LUCIER and LAURIE LUCIER, et al, Plaintiffs, versus PHILIP MORRIS INCORPORATED, et al., Defendants, Case No. 02AS01909, came on regularly this day before the Honorable Steven H. Rodda, Judge of the Superior Court of the State of California, for the County of Sacramento, Department 44/1 at 10:00 o'clock a.m.

The Plaintiffs, LAURENCE LUCIER and LAURIE LUCIER, were represented by: GARY M. PAUL, Attorney at Law; MARY ALEXANDER, Attorney at Law; and ROBERT M. BROWN, Attorney at Law.

The Defendant PHILIP MORRIS INCORPORATED was represented by: GERALD V. BARRON, Attorney at Law; LAURA C. FEY, Attorney at Law; STEPHANIE A. SCHRANDT, Attorney at Law (not present); DEBORAH A. SMITH, Attorney at Law (not present); and ANNIE Y.S. CHUANG, Attorney at Law (not present).

The Defendant R.J. REYNOLDS TOBACCO COMPANY was represented by: THEODORE M. GROSSMAN, Attorney at Law; HAROLD K. GORDON, Attorney at Law; ELIZABETH P. KESSLER, Attorney at Law; DANIEL J. McLOON, Attorney at Law, and STEVEN N. GEISE, Attorney at Law.

The following proceedings were then had:

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THE COURT: Good morning.

(All say "good morning".)

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THE COURT: Okay, we have just a few residual matters before we proceed, to bring the jurors in.

One is the motion, defense motion in limine, regarding Dow and Nicorette chewing gum. I've considered that, and my view, it's of marginal relevancy. It has something in the nature of character evidence. It will confuse the jury, doesn't directly relate to a plaintiff in

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a situation. In the exercise of my discretion under Evidence Code Section 352, I am going to grant this motion.

The probative value is outweighed by potential prejudice, confusion of issues, and undue consumption of time in view of its relevance.

Are there any other issues that we need to address before we bring the jury in?

MR. PAUL: There are a couple more, your Honor.

Yesterday we had a discussion about a document, of which I have blowup. I can show it to the Court.

It's our Exhibit 374.

You may recall this is the document that had the comment in it by Mr. Wakeham, who is vice-president of Philip Morris, where he said nobody believes we are interested in the truth on this matter, regarding the fact that a multi-billion-dollar industry, et cetera, et cetera.

We had discussed that yesterday.

THE COURT: Right.

MR. PAUL: I had intended to use this document. I'm not sure what the resolution was. They argued that we were getting into the value of the company; I don't think this

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document does that. It talks about research and advertising, how much they spend, neither of which has something to do with how much money they're making, the company is making. This company could be making no money and spending that amount of money on research and advertising.

THE COURT: Are you going to show that the jurors?

MR. PAUL: I would like to.

THE COURT: I thought that was resolved, unfortunately.

MR. BARRON: I thought that got resolved in terms of your decision to defer such evidence until later. And that was in response to a motion about the financial condition. And so it is technically unresolved, and we still object, for those four reasons that I stated.

I don't want to belabor it, and I think that Reynolds is arguing the financial-condition motion in limine.

THE COURT: I am going to sustain the use of it in opening statement. I'll reserve that issue when it comes up before the jury in terms of whether you can introduce it in that form or some redacted form.

MR. PAUL: Without getting into the numbers, may I comment --

THE COURT: You can comment without getting into the specific figures, the billion-dollar industry, the use of the actual figures.

MR. PAUL: All right, thank you.

MR. BARRON: One more housekeeping matter, your

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Honor.

THE COURT: That's fine.

MR. BARRON: That is, we did, by that 7:00 o'clock deadline, not object to three, I think it was -- Or two, it was, documents.

However, one of them I need to at least alert counsel to them. We would object at the time it would go into evidence.

The reason we didn't is, frankly, it covers the same issue that you overruled our objection on, probably with Exhibit No. 10, which is the -- About -- Exhibit No. 10, the Levy work, and so-called, perhaps, baring the results if

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they were unfavorable.
That was document No. 30. It's the nicotine-receptor program, and our position is similar; we think that it's a post '69 document that discusses primarily, in essence, our decision to not say something, our decision not to warn.
He would argue it's a concealment kind of document, I suppose. It's very similar to the Levy motion -- I mean document. And we would ask at least that portions of it that go to failure to warn be redacted.
And that's the last housekeeping matter. I didn't want to take a lot of time with it.
MR. PAUL: Your Honor, with all due respect, we discussed this document yesterday. The Court ruled on it. I'm prepared for opening statement -- And now to come in this morning --
THE COURT: I am not going to reconsider any rulings.

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MR. PAUL: Thank you.
MR. GROSSMAN: Your Honor, I wanted to address one document. I wasn't here yesterday, but it's something that has been ruled upon by so many courts. And it deals with, simply with advice given by Shook, Hardy -- And the name has been eliminated -- To the Tobacco Institute.
I understand it came up at the very end of the day yesterday. It's this document here -- Blank -- That's Shook, Hardy reminds us -- "I am told that the entire matter of the addiction is the most important -- The most potent weapon a prosecuting attorney can have in a lung cancer cigarette case. We can't defend smoking, a continued smoking as a free choice if the person was addicted."
That document -- And that quote deals with legal advice. The -- In a variety of cases, including aggregated cases, where there wasn't one person, but a class or an aggregate through a union trust fund. The courts have ruled time and again that that can't come in, not only because of questions of attorney-client matters, but because its prejudice is so far much greater than any potential relevance.
What the Tobacco Constitute was told by its outside lawyers, by any of its outside lawyers, about their viewing of how litigation would turn out under various circumstances, or the effect that an issue might have on various circumstances, is not relevant, either to Mr. Lucier's smoking decision or to any issue that's before this jury.

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But the prejudice is enormous.
And for that to be shown in opening argument, I think injects prejudice into the case, prejudicial error into the case at the outset.
Now, the plaintiffs have made no proposal, have made no argument as to how that relates to Mr. Lucier or how it relates to this case. But the prejudice is obvious. Judge Weinstein, in the Eastern District of New York, who wrote the Federal Rules of Evidence, rules on this document --
MR. PAUL: Your Honor, I'm going to object to this. We have no showing of what some other judge ruled, and whether some judge ruled in some fashion -- I can point out cases where it has.
The point is we discussed this document yesterday. The Court overruled their objection to it, and now I come back at 10:00 o'clock in the morning, after preparing for opening statement, at the beginning of my opening statement,

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and they again raise the same issues -- I just think it's improper to go back and revisit the decisions that were made yesterday.

MR. GROSSMAN: Your Honor has made clear that on issues of this kind --

THE COURT: The objection about attorney-client privilege is not one that I considered, I don't think. I don't recall that having been raised or discussed.

MR. GROSSMAN: I wasn't here, and I certainly know from talking to my colleagues that the point that this was an issue raised -- There is a quote attributed to lawyers,

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to outside lawyers, was not raised in the argument.

And that's what this is all about. It's a quote attributed to outside lawyers, and to show that to the jury injects error from the outset. Nor does it go to any issues that plaintiffs have raised.

The prejudice is so obvious that unless -- If the plaintiffs during trial can somehow show the relevance and that the relevance overcomes prejudice, then I think it can be addressed then. But, first of all, the document's not relevant, and, secondly, the prejudice of showing what counsel suggested to the T.I. or advised the T.I. is just enormous.

MR. PAUL: What it says, though, these are T.I. people talking, not the lawyers. This is the position of T.I., which is the tobacco companies, and the people inside the T.I., Paul Knopick, who's T.I. editor and William Kloepfer, who's the T.I. vice-president, they say -- Not the lawyers -- They say, "We can't defend continued smoking as, quote, 'free choice', close quote, if the person was, quote, 'addicted'," close quote.

That was exactly the issue that was raised over and over again with this jury. Personal choice, free choice, they know how powerful this addiction area is. That's why they hid it from the public, and that's why they didn't admit until 2000 that cigarette smoking is addictive.

THE COURT: Is this the last issue? No other shoes are going to fall here?

MR. GROSSMAN: No. Before my argument I want to

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bring up two things that I wanted to put before the jury, and I want to make sure is that it didn't constitute a waiver. That's a different issue, and I'll address it later.

THE COURT: What are those issues about your opening?

MR. GROSSMAN: Simply that there were two statements made, Congressional hearings by the Public Health Service, and by the National Cancer Institute, 1967, as to whether warnings were appropriate on cigarettes at that time.

The -- No Noerr-Pennington or any other privilege has ever been satisfied by Government as to those statements. But I want to make sure that when the Public Health Service and the National Cancer Institute were stating their official position in congress, that that would not be argued by plaintiffs or seen by anyone as a waiver of Noerr-Pennington privileges that are owned by these companies as to their testimony at any time in Congress or their --

THE COURT: This is something that you would bring up in opening statement?

MR. GROSSMAN: Yes.

THE COURT: And you want that resolved before making

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your opening statement, because you're concerned whether that would constitute a waiver in this context?

MR. GROSSMAN: Yes, yes.

MR. PAUL: I can't bring up the issue of Noerr- Pennington on the issue of liability because it's a statement made by Congress, but on the issue of liability they want to

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bring up statements of other people that would assist them in the area of liability.

I don't see that Noerr-Pennington goes just one way on this issue. If it touches on the area of liability. I think any statement made to Congress is, under Noerr- Pennington, not admissible.

MR. GROSSMAN: Noerr-Pennington is a First Amendment privilege owned by the speaker.

The Government has never stated that statements to Congress constitute privileged statements that can't be used in any context --

THE COURT: Okay. We'll take this issue up before your opening statement.

MR. GROSSMAN: That's fine, your Honor.

THE COURT: In terms of this remaining document, I'm reluctant to, but I am going to reconsider that ruling. I'll consider it -- I recognize this puts you in a difficult situation, Mr. Paul. It's difficult to rule on these matters in something -- Not a complete -- But -- But in something of a vacuum. And because they entail some exercise of discretion, under Evidence Code Section 352.

But I think the prudent course with respect to that document, in view of recent objections, would be to preclude it from opening statements, without prejudice or reconsideration. When you wish to offer it in the course of the evidence, we'll have a better perspective of the matter and of its context and the relevance.

So I am going to reconsider that document only.

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Don't use it in opening statement.

MR. PAUL: Am I not allowed to say that the tobacco companies took that position, first, forget what they said about attorneys --

THE COURT: Just that document. Don't mention the document itself.

MR. PAUL: But can I mention that the Tobacco Institute said, amongst themselves, we can't continue smoking as a free choice if the person is addicted?

THE COURT: I'm just referring to the document.

MR. PAUL: Okay.

THE COURT: Anything else before we bring the jury in?

MR. PAUL: Yes. There are a couple of more things, your Honor, because you asked me to do this.

Number one, you asked me to check with Dr. Davis. I did do that. I actually talked to him this morning, around 7:00 am.

He's back in Michigan.

THE COURT: Good.

MR. PAUL: I've explained the situation to him; he didn't have, for whatever reason, a full understanding.

He has indicated to me that an N.C.I. document -- He has to go to the N.C.I. to get all this accomplished. He said that he will do that. He will Fed-Ex to me, he said -- Put it in a box, because he's got to get to Michigan, he's got to -- Put it in a box on Friday, and he's going to

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Fed-Ex it to me, at which point it will be delivered to me,
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I guess, by Monday, or Tuesday, because of the holiday.
There are some issues in this that deal with -- He's going to check with N.C.I. to talk about Freedom of Information Act issues, because there are other people named in this, who gave their background who might be co-investigator on this thing.
He might get any input that the N.C.I. would like to indicate to the Court might result in a privileged area, like budget, or how much people get paid, that kind of thing.
I am going to provide -- I'll provide that to the Court as soon as I get it. The Court will have the whole thing, and do with it as it wishes.
THE COURT: Okay, all right.
MR. PAUL: Okay.
The last thing I wanted to mention to you, it's on the way, I hope.
We do have two things that I didn't talk to counsel about yesterday. Which I don't think are controversial.
Number one, I have pictures of Mr. Lucier. You'll all have a copy of that. I just wanted to show that to the jury:
MR. GROSSMAN: Where are they?
MR. PAUL: They're on their way -- Oh, they're walking in the door.
MR. PAUL: And the last thing I have, your Honor, is just a medical drawing that just shows the location of the cancerous mass in both the lung and the brain.
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And it's been approved by the doctors who did the surgery. They laid the foundation for it -- And will testify that it's accurate.
MR. GROSSMAN: May I see it?
Your Honor, we have no objection to the exhibits to the demonstrative -- It's going to be a point of dispute in the trial -- But it's demonstrative of the evidence that plaintiffs stated that they are going to offer. So we have no objection to it.
MR. PAUL: Thank you.
THE COURT: Anything else?
MR. PAUL: No, your Honor.
THE COURT: We're waiting for jurors, apparently. A couple haven't arrived, and I've been advised by the Court attendant that juror two, Mr. Kramer --
Has he shared this information with you?
MR. PAUL: No.
THE COURT: Mr. Kramer has advised him that he's not being paid while he's on jury duty.
This is all the information that I have, that he was advised by his immediate supervisor, that he would be paid. But the ultimate person responsible, the president or whatever -- I don't recall what kind of organization, where he works -- He said no.
And I don't know how clearer I could have been about this issue, the need to get it resolved. They need to talk to the person who ultimately would make that decision. And now at this point in time --
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MR. PAUL: Your Honor couldn't have been clearer, I don't think.
THE COURT: And he waited until we got a jury. So

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I'm very disinclined to excuse anybody at this point.
MR. GROSSMAN: I would agree, your Honor. You couldn't have been clearer.
MR. PAUL: Well, I agree that you couldn't have been clearer, but I'm concerned that if we have a juror up here who's not getting paid, I agree that he certainly should have brought it to our attention. But to have him sitting here for weeks --
THE COURT: You folks talk about it and see if you can reach a resolution.
MR. PAUL: He's not going to be a happy person.
THE COURT: And I guess we're waiting for a couple of jurors.
(The Court departs the bench at 10:08 am.)
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THE CLERK: The Court wishes to see lead counsel in chambers.
(Mr. Grossman and Mr. Barron and Mr. Paul retire to chambers at 10:12 am.)
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THE COURT: Okay, we have a request for media coverage, KTXL, and KXTV.
I am going to grant their request to report requested opening statements. But I -- I want to maintain the privacy of, the identity of the jurors. That's really

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important, so that's going to be a condition.
What about pooling? Is that possible?
TV REPRESENTATIVE: Well, it makes it very difficult for us, your Honor, because we have two different tape formats.
THE COURT: Can you folks set up over there and keep your equipment separate and not inconvenience, disrupt things?
TV REPRESENTATIVE: What we have done in the past in this courtroom for these hearings is set up behind the bar, behind the side bar, that way.
THE COURT: Okay. We're going to have alternate jurors up here. And you --
TV REPRESENTATIVE: That won't be an issue, because we're obviously most interested --
THE COURT: Go ahead and set up. The only other condition is that you not upset the proceedings in any way.
TV REPRESENTATIVE: Okay. Thank you, Judge.
Your Honor, do you know if the attorneys will be speaking at a podium or --
THE COURT: It depends on their personal preferences. I don't know.
MR. PAUL: I am going to be up here.
(10:40 am)
THE COURT: Okay, counsel, before we proceed formally with the jury, I am going to bring in Mr. Kremer and talk with him individually.
Any objection to that?

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MR. PAUL: No, your Honor.
MR. GROSSMAN: No, your Honor.
THE COURT: Okay. Ask Mr. Kremer to come in.
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THE COURT: Would you take your seat, Mr. Kremer.
JUROR KREMER: Yes, sir.
THE COURT: There's been some development, I understand.

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JUROR KREMER: Yes. I apologize. I know this is a very hard time, but I've had some developments at work. The company staff on this -- And also some accounts up in the Lake Tahoe area that could use some immediate attention --
THE COURT: You were advised by --
JUROR KREMER: I was.
THE COURT: -- By your supervisor that you would be compensated?
JUROR KREMER: I was under the understanding that they would accept the proposal I put together for the work entailed and the hours entailed. And it was my understanding that everything would be okay. And then somebody higher up in the company has vetoed that.
THE COURT: Okay. There's been a lot that's gone into getting to this stage, including your selection and identification of the jury, so I am extremely reluctant to make any changes at this point in time.
JUROR KREMER: I understand, and I extremely apologize to the Court and to all the attorneys.
THE COURT: But what I am saying is: My view is that

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you should not be excused at this time.
JUROR KREMER: Yeah.
THE COURT: And I think perhaps you might want to revisit that issue with your employer, whoever is responsible --
JUROR KREMER: I have put another proposal together for them.
THE COURT: Okay, appreciate that very much. We want you to hopefully participate and not be distracted by what's going on at work and give us your full attention and your full thoughts and your full energy, as we would expect of any juror.
If you think it might be helpful for me to write a letter to the person who's responsible, I can do that. I have to be very diplomatic about that. I've done that in the past, infrequently.
JUROR KREMER: Um-hum.
THE COURT: And if you think that might be of some assistance, I would be prepared to do that.
JUROR KREMER: I don't know. I don't know who --
THE COURT: Just let me know, and you are going to be included as a juror. We are going to proceed. And if you think that this issue needs to be readdressed, you let me know, and I'll reconsider the circumstances at the time, depending upon how things develop. Okay?
JUROR KREMER: Okay. The only concern that I do have, is the salary, that will affect my bonus. But other than that, I -- Yeah.

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THE COURT: You're working on something that may result in a satisfactory resolution?
JUROR KREMER: The arrangements have fallen through right now, that I made earlier with some of my accounts. And those have since changed the status, and it does affect my bonus, my volume.
So, other than that --
THE COURT: Is that something that you can possibly address with your employer?
JUROR KREMER: I will -- It would be something that I need to address with my wholesalers.
THE COURT: Okay. You'll do your best?
JUROR KREMER: Yes, sir.

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THE COURT: And when you get a definitive response --
JUROR KREMER: I think once I have a schedule too, I'll be able to put a better proposal together. I just want to make the Court aware of what --
THE COURT: I appreciate that. I'm not flat denying this request. I'll reconsider it under the circumstances, and I'll reconsider it at a later point.
I very much appreciate your involvement.
Would you step outside again, please.
JUROR KREMER: My apologies, again.
THE COURT: These things happen. We understand.
(Juror No. 2, Mr. Kremer, steps outside.)
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THE COURT: Okay, counsel, I am going to bring the jurors in, take a few minutes about what's involved in a

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jury trial, their responsibility and things of that kind, and then we'll proceed with the opening statements.
Looks like you're going to end up with about an hour this morning. Okay, Mr. Paul?
So if you haven't finished, break at the logical point, around the noontime. And if you don't break, I'll try to find a logical point for you to break.
MR. PAUL: Thank you, your Honor.
THE COURT: All right. Let's bring the jurors in, please.
(The jurors are brought in at 10:45 am.)
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THE COURT: Good morning.
(All say "good morning.")
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THE COURT: Okay. All jurors appear to be present.
The clerk will now administer an oath. The original 12 jurors, not alternate jurors, but the original 12, please rise, and the clerk will administer an oath in the case.
THE CLERK: Please raise your right hand.
Do you and each of you understand and agree you will well and truly try the cause now pending before the Court and render a true verdict according to the evidence and instructions of this Court?
(So say they all, "yes.")
THE CLERK: Thank you. Have a seat.
THE COURT: There's a separate oath for the alternate jurors.

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Alternate jurors please rise, and the clerk will administer the oath.
THE CLERK: Please raise your right hand.
Do you and each of understand and agree that, if calmed upon to do so, that you will well and truly try the cause now pending about the Court and render a truth verdict from the evidence and instructions of the this Court?
(So say they all, "I do.")
THE CLERK: Thank you. And be seated.
THE COURT: I want to express our appreciation for your commitment to being here, and your responsibility as trial jurors and your willingness to participate, and everything that's gone on so far in terms of your participation, we greatly appreciate that. You're performing an important civic responsibility.
At the outset of trials like this, I take a few minutes to explain what the responsibilities are, what our schedule is going to be and things of that kind.

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So let me go to the schedule right at the outset.

We're going to be in session on a daily basis from 9:00, Monday through Friday, 9:00 to 12:00 and 1:30 through 4:30. And I try to take breaks for ten minutes on the hour.

Sometimes we get a late start where there's an interruption, and if that occurs, that will be adjusted in some way.

But I think that an hour is about, a sufficient period for you to maintain your focus on things, so we'll try to accommodate that.

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Thursday, I have other responsibilities in the morning, so on Thursdays we won't start until 10:00 o'clock, usually. So if there's going to be a deviation on that, I'll let you know.

Monday is a court holiday; we won't be in session that day, and we won't be in session for Thanksgiving and the day after Thanksgiving. If we have other changes in schedule, I'll try to let you know well in advance so that you can plan accordingly.

You can look at a trial in terms of parts or stages. The first part of a jury trial is to select a jury; we've done that, selected a jury, you are going to make decision in the case.

After a jury is selected, the next part or stage of the trial is an opportunity of the lawyers to make what are called opening statements. Opening statements are statements by the attorneys as to what they expect the evidence to be in this case.

Now, they've done some preliminary work in advance of the trial, of course, and so they have some ideas as to what kind of evidence they are going to be introducing here in Court during the trial. And their opening statement is their opportunity to tell you about that.

You should realize -- And I am going to be emphasizing -- What the lawyers say during the trial is not to be considered as evidence in the case; you cannot consider what they say in opening statement as evidence in the case. You can't consider what they say at other times

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during the course of trial as evidence in this case.

There's one small exception to that, and that is, if they agree to something, we call it a stipulation, in legal parlance, that if they stipulate to a fact, you do have to regard that fact as true. But absent a stipulation, what the lawyers say is not considered as evidence.

After the opening statements are made, then the evidence will come in, primarily through the testimony of witnesses who will be called by the respective sides, subject to examination, direct examination by the party calling the witness, and cross examination by the other side. And while that testimony is being offered in evidence, I'm confident that we'll have a lot of -- Or a number of exhibits, written documents, that will be identified and received in evidence as well. That's part of the evidence.

After the evidence is concluded, the attorneys will have another opportunity to speak to you, to make what are called closing arguments or summations. These will be their views as to what they think the evidence has shown and what they believe your verdict should be under the circumstances.

It's called arguments.

After the arguments are concluded, then I will read

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the rules of law that apply to the case; it's called instructing the jury. And these will be rules that counsel, the attorneys and I will have gone over in advance and have decided are the rules that apply to the case. And they will provide you with all you need to make an informed,

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appropriate verdict in the case, what your responsibilities are, how you can view things, what standards have to be met, who has to prove what, all the things you need to lead you to an appropriate verdict. You'll also have a verdict form.

I'll read those to you in open court. I'm required to do that under the law, and my practice is to have copies of those instructions available to you to read along with you. So I'll do my best to make sure that you'll have those. And in my experience, jurors have abetter appreciation and understanding if that happens.

After that, you retire to the jury-deliberation room, and then the 12 jurors, that's the first time that you can talk about the case. You'll deliberate and decide the case and fill out a form in accordance with your determinations and bring that to court. And then that concludes your participation. Basically, that's what is involved in a jury trial.

You now appreciate, I'm sure, that you have an important responsibility. Besides paying attention, the next most important responsibility that you have is not to talk about the case and not permit anyone to talk to you about the case. That's a broad rule, and it relates not only to what the witnesses say; it includes to things like your observations about things that are going on in the courtroom, anything that has anything to do with the subject matter or matters in controversy in the case. It's a very broad, very broad rule.

The cardinal rule of acting on jury duty is not to

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discuss the case and not to permit anyone to talk to you about the case. If someone should approach you and try to talk to you about the case, it would be your responsibility to report that to the Court, and I would have to deal with it.

Now, the rules are broader as it relates to the participants in the trial. The participants would include the attorneys, the parties, the plaintiffs and the defendants, their representatives, the witnesses -- Or anyone who may be associated in any way with the case, the presentation, in any form.

So there are quite a number of you jurors, including the alternate jurors. You are going to find that you're interesting people and intelligent people, and you are going to enjoy the opportunity to socialize with each other during the course of trial. And it's okay to do that, just so long as you don't talk about the case. But you should recognize that the rule as it relates to participates is very broad; it's even broader than the one about not talking about the case. The rule as it relates, you can't talk to the attorneys at all about anything relating to the trial.

As I told you earlier, the attorneys are not going to communicate with you, outside this courtroom, except here in open court in a proper way. They recognize that, because of their ethical, professional responsibilities. You, as jurors, have a commensurate responsibility not to communicate with them. So you have to maintain a distance; that's just appropriate under the circumstances.

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When a case is over, the rules change. But until then, you're expected to abide by that.
And I talked about this before. Don't draw any inferences about -- They're all friendly, social people who would be happy to socialize with you under other circumstances, but they have to accommodate and abide by their responsibilities. You have the same responsibilities.
Anyone in the courtroom or out there, outside, that you don't recognize -- that person, assume that person may be involved in the case. The witnesses are going to be assembling outside in the courtroom area where you folks will be. If you don't recognize a person, just assume that person may be a prospective witness, and don't engage that person in discussion. Confine your discussions among yourselves. I would ask you to do that during the course of trial.
You are not to be -- As jurors, you have to make your decisions in this case based upon the evidence that's introduced in this courtroom, in an appropriate way -- Evidence that's admissible under our rules of evidence, evidence that's subject to being tested by examination and cross examination.
Our rules of evidence have two essential underlying principles: One, whatever a fact-finder considers by the jury has to be -- Has to be relevant and trustworthy. That's one of the basic underpinnings of our rules of evidence. So what you consider in terms of making your decision has to be subject to those rules. But don't do
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anything outside this courtroom to obtain any information about anything you feel may have any bearing on any subject that may come up during the course of trial. That's really important too.
So as I told you before, don't do any research, don't go to any law books, medical books; don't talk to anybody, obviously. Don't go to the Internet on anything that may in any way be related to this trial. You have to make your decision based upon what's introduced here in evidence and an appropriate way when everyone is present, subject to our rules of evidence, subject to being tested by examination and cross examination. That's critically important.
Avoid any media account of this case. If something appears in the radio or in the newspaper, on television or radio, it would be your responsibility not to listen to that, not to hear it, not to consider it, avoid it. Please.
So you should be sure that you don't expose yourself to whatever media attention is given to this case, and, obviously, you can see that there is some. You see the cameras back here, so avoid that.
And there is going to be some filming in here during the opening statement, and you are not to be filmed. I'm protecting your privacy by ordering that you not be a part of this process. You so you shouldn't be concerned or distracted by that. And, certainly, you should not otherwise become aware of any account. That rule is broad. It relates not only to accounts relating to this trial, but anything that has anything to do with anything associated
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with this case in any way or any of the parties involved in this case in any way.
Okay. So some kind of incidental things:
You have note pads. You can take notes if you want

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to, but you don't have to. It's entirely up to you.
If you do take notes, leave them on your seat each time we take a break, and you will be able to take them into jury deliberations. But notes are only for the note-takers own personal use in refreshing recollection of evidence. So in the jury room, if there were a question about what testimony -- What the testimony was, you would -- You would have an opportunity to ask the court reporter to read back the relevant proceedings, and those proceedings would prevail over any juror's personal notes, of course.
You will have the opportunity to do that. Sometimes that can be real time-consuming, but it's entirely up to your discretion. If you request to have testimony repeated, then that certainly will take place.
I want to kind of -- This touches on another subject. I'm not going to be too much longer here.
Your job is, you're the Judge's of the facts. I'll tell you what the law is during the course of trial and at the end of case and instruct you on your role. So your job is to decide what the facts are, what the truth is during the course of the proceedings.
So if you -- you should be focused on evaluating the evidence right from the very beginning, recognizing that you going to have to go back to that jury-deliberation room and

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make decisions. So if you are going to recall the evidence, recall the witnesses -- We've discussed that in terms of evaluating that evidence -- And recognize that, at the end of the line here, you are going to have that responsibility. So you should be paying attention to the evidence as it develops right from the very beginning. Sometimes I don't think jurors fully appreciate that role. But that's your role.
Also, in terms of note-taking, you are going to be assessing the believability of the witnesses. Part of your fact-finding responsibility is to assess and judge the believability of witnesses.
At the end of the case, I'll read an instruction on factors that you can take into consideration on judging the credibility. And they're all common-sense things, things that you would think of on your own.
One of them is observing the demeanor of the witnesses while they testify, that is, how they present themselves. So if you're a note-taker, don't be so concerned with taking notes that you don't watch the witness, because that's part of your responsibility.
This is not the happiest topic I discuss with you.
Every trial of any duration involves interruptions in the trial. Undoubtedly, we are going to have interruptions. There may be an evidentiary issue that comes up, and I would have to discuss that with the lawyers and give them an opportunity to state their positions and make a ruling on the record.

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Any number of things may come up during the trial, and I'm always astounded by the fact that I haven't seen them all yet. But if that happens, I may not explain why we're having an interruption. If we're having a late recess or early recess, or whatever, those things are just part of the process. And we're all different temperaments and different levels of patience. So if you folks realize that and factor that in in terms of the schedule and recognize that it's a part of the process, don't become impatient if

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that occurs. I assure you, we'll do our best to expedite this process. I'll give you that assurance now, that we'll do this as efficiently as we can, and I hope that you'll understand that we're not wasting your time if there's a delay. Take that opportunity to enjoy the relationships which you'll be forming among yourselves and socializing, and not talking about the case.

From time to time counsel and I will have side-bench conferences, and I will say, "Please don't overhear our conversation."

I encourage side-bench conferences because, in my experience, they can expedite the process. But you shouldn't be overhearing our conversations. There may be different reasons for side-bench conferences, but typically they arise when there's a question of evidence. And in order to make a determination, ruling on an issue of evidence, I have to know what the proposed evidence is. And I do that outside your presence, because if I sustain the objection and decide that the evidence is not admissible,

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then you shouldn't hear about it. And then if we have proposed evidence coming in and I say "disregard it", you all recognize that it's truly hard to do that.

So no one -- I can assure you that we're not trying to hide anything from you. Don't worry about these discussions; it happens in any part of a trial. It's a typical part of the process, and just don't worry about it. Things are being handled appropriately.

Counsel will be referring, undoubtedly, to depositions during the trial. A deposition is testimony taken before the trial usually in an attorney's office with the attorneys present and a court reporter present. And the court reporter administers an oath to tell the truth, and then the witness is examined. And that ultimately is typed up and put in a booklet form called a deposition. And I will instruct you on the significance of depositions, and that instruction basically says you are to regard deposition testimony just like it had been given here in open court.

You may have questions about whether or not jurors can ask questions, and the answer to that is: You cannot under the rules; you are not permitted to orally examine anyone. But if you have a question and you think that it's worthy of consideration, write it down on a piece of paper -- Don't share it with other jurors, don't talk to the court attendant about it -- Hand it to the court attendant. He'll give it to me, and I'll discuss it with the lawyers. And if it's an appropriate question, then the probability is that it will be answered during the course of

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the evidence. Maybe not immediately, but at some point in time. But it may be something for which there is no evidence, or it's something that's objectionable or shouldn't be considered. If that occurs, I'll not tell you why your answer to the question hasn't been answered. You just won't get an answer.

So I don't want you to speculate about that.

And I want you also to remember that if you ask a question in that way -- And that's the way to do it -- That doesn't happen very often, frankly, in my experience -- But if it were to happen, your responsibility here is to be the judges of the facts.

You are judges, so don't assume an adversarial role. If you have a question favoring one side or the other, just

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ask the question that you think relates to what you would like to know. You can do it in that fashion.

Okay. That concludes my thoughts.

Ready for opening statements now, are we?

MR. PAUL: Yes, your Honor.

THE COURT: Okay, Mr. Paul.

MR. PAUL: Thank you very much, your Honor.

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MR. PAUL: Good morning. Well, it's almost afternoon, but good morning anyway.

Let me start off by showing you a picture of Larry and Laurie Lucier, and their daughter. Larry and Laurie. That picture was taken in 1997, before he was diagnosed with cancer.

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I want to start off by telling you that Mary Alexander and I are honored to represent these people in this trial.

This year 40,000 people will die in California. From smoking. 50 percent of all long-term smokers will die of smoking-related disease.

This case will show you that the reason those numbers exist is because these defendants have lied, distorted, deceived and in this case destroyed Larry Lucier's life.

Larry Lucier is on death's doorstep. The knock hasn't come yet. But it will. And the reason he's going to die is because cigarettes kill him -- They are killing him now.

Over the years, you will hear that these defendants knew the truth. They knew that their product killed. But they never told anyone.

Over the years these defendants promised to tell the public the truth. What did they do? They lied. They never told the public the truth.

These defendants have known for over a half a century that cigarettes are addicting.

Did they tell the public? No. They lied and said they were not addictive.

These defendants knew for over 50 years that cigarettes caused lung cancer. Did they tell the truth? No. They lied. They hid that. From the public.

Four and a half years ago, the chairman of the board of Philip Morris, Mr. Bible -- That's his last name --

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Mr. Bible -- Made the comment that as he believed that if one person died from smoking, he would shut the company down.

That was in 1998. Philip Morris is not shut down. They lied.

What we are going to demonstrate to you is a massive conspiracy. A conspiracy that will shock you, will amaze you, will stun you, because of its depth and its deception.

It has its roots in money. It has its roots in making sure that the truth does not come out, because if the truth comes out, people will stop buying cigarettes, and they would fold.

Money is put ahead of health. Money was put ahead of people getting cancer. Money was put ahead of people getting heart disease. They could have done something, and they've known it for decades -- To take away the risks and the harm. They did nothing. And still do nothing. To take away that risk.

This story of deception goes to people having a hard

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time quitting. They tell you that you should know it's hard to quit smoking.

But do they tell you that? No. You should find that out from other people.

You should not smoke.

Over the decades did they say that? No. That's something your parents should have told you, that cigarette smoking would kill you.

Did they tell you that? No. The government should

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tell you that.

MR. GROSSMAN: Your Honor, may we approach.

MR. PAUL: That's what the evidence will be in this case.

THE COURT: Mr. Grossman.

MR. GROSSMAN: Yes?

THE COURT: Do you wish to approach?

Please don't overhear our conversation.

(A brief discussion among the Court and counsel was held at bench outside the hearing of the reporter at 11:10 am.)

MR. PAUL: The evidence in this case will be that there are over 200 chemicals in cigarettes.

The evidence will be cigarette companies never told the public about that. You were supposed to find that out from other people.

The evidence will be that the cigarette companies knew for decades that their source of smokers were young people, that they targeted young people, because they needed new smokers because the old smokers died.

The evidence had been that cigarette companies never told you that. You were supposed to find that out from somebody else.

The evidence will be that if you smoke cigarettes, you are going the dye younger. Tobacco companies have never told the public that. You're supposed to find that out from other people -- Because, you see, it was, all the evidence will show, part of the plan, the scheme, the effort to hide information that would have a negative impact on the bottom

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line, on the dollars.

So what do we know about smokers? Most smokers start as teenagers. Not a surprise there.

Most smokers who start as teenagers generally are addicted by the time they get out of high school.

Most smokers normally have somebody in the family who smoked: Their parents, maybe a brother, maybe a sister, an aunt, an uncle.

Most smokers, especially teens, started smoking with their friends; they had friends who smoked.

You'll hear that Mr. Lucier meets all of those criteria -- Exactly his life pattern.

But in this case from these defendants you are going the hear that Mr. Lucier is on trial. And you will hear evidence --

MR. BARRON: That is argumentative.

THE COURT: Sustained. Proceed.

MR. BARRON: Thank you.

MR. PAUL: You'll hear evidence that Mr. Lucier, quote, stole cigarettes from his parents when they left cigarettes lying around the house.

You'll hear evidence that Mr. Lucier had some blank spots on his resume when he was applying for a job.

You'll hear that Mr. Lucier got into a little

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tete-a-tete with a nurse at a hospital -- When she made the comment she's not a good decision maker.

You will hear that Mr. Lucier threw away a ten-year-old computer on which he used to send e-mails back

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and forth to his siblings.

But we believe the evidence will demonstrate that it's not Mr. Lucier's credibility that is on trial here; that the non-truth-telling side of this story is what the tobacco companies did for over 50 years.

MR. GROSSMAN: Objection, your Honor, to the argument that Mr. Lucier's credibility is not in issue.

THE COURT: Proceed with your argument -- Proceed with your opening statement.

MR. PAUL: Thank you, your Honor.

The evidence will be that there was a massive fraud on behalf of the tobacco companies.

Now, did he make mistakes? Sure.

Did he take responsibility for his mistakes? Sure he does. As people we all have to take responsibility for what we do in our lives.

But in the evidence, in this case, you'll hear that these companies, these two defendants, have never taken responsibility for what they've done. Let's take a jury back in time. Really run back the years now.

We're going to go back to the early 1900's. Back around the time of the First World War. Woodrow Wilson was president of the United States.

Back at that period of time, cancer was known; various kinds of cancers had been diagnosed in various parts of the body.

But lung cancer is virtually unknown. You go back, and you look at the medical history; one cancer is not being

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diagnosed.

The event occurred around 1915, which has a dramatic effect on that issue. The evidence will be that about that time, some smart engineers figured out a way to roll cigarettes in a machine. Didn't have to use paper anymore, and pour the tobacco in it, roll it up -- And I'm acting like I want to do that -- And light it up. Took time, took effort.

So good ingenuity in the country, they just decided to build a machine that mass-produces them.

(Counsel snapping his fingers).

Cigarettes became far more accessible to the public in general, and smoking increased dramatically in the United States.

And as we moved through the years: The twenties, the years of the flappers; the thirties, the years of the depression; the forties, the years of World War II, smoking increased. And it increased, and it increased.

Well, when they started getting into the later nineteen-forties, another phenomenon came along in the United States as a dramatic impact on all these issues: Television.

Televisions were brought into people's homes. Okay. Kids could sit in front of the tube for hours, watching and taking in the advertisements and what they see on the screen. Didn't have to just go to the movies anymore on a Saturday afternoon, pay a quarter, sometimes even a dime to get into a really good matinee; you got to see two movies

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for that price back then.
But it started to bring the environment to young people, to the public in general.
Well, this is where I -- My board starts, because all those other years were way before I could even put it on a board.
It gets us to about 1950 -- A dramatic year for both Mr. Lucier and for the health of this country.
In 1950, Mr. Lucier was born in Tallahassee, Florida. Well, at the same time in 1950 other events were occurring. Some very famous doctors were fascinated about this epidemic of lung cancer that was showing up in hospitals.
And some epidemiologists, some extremely famous epidemiologists began to do some research and analysis about this subject of lung cancer: Where is all this new lung cancer coming from? And one of these people --
Your Honor may I just go up here?
THE COURT: Yes.
MR. PAUL: Thank you.
Mr. Richard Doll, epidemiologist, from Great Britain, who you will have an opportunity to hear in this case, by videotape deposition that was taken of him -- Extremely honored man, knighted by the Queen of England, every award you can get in medicine in England, awards by the United Nations, by the United States on his work in health. So Richard Doll was almost 90 years old at this point, still spry and in pretty good shape. Doesn't travel as much as he used to.

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Well, he and a Dr. Hill started doing some analysis in Great Britain on this subject of: Where is all this lung cancer coming from?
And what an epidemiologist does -- And I'm not an expert on it -- But essentially they try to find what are the factors that could cause this problem that we're seeing? Maybe there's something in the environment. As an example, you're probably heard about clusters of leukemia that are located in certain communities, they go into those communities and try to figure out what is it that could be causing all of this leukemia.
Well, Dr. Doll and Dr. Hill started doing research in Great Britain to try to find out, and they started looking at all kinds of different things to see what was causing this problem. Well, at the same time there were two doctors in the United States, Dr. Wynder and Dr. Graham, who were doing the same thing. Didn't really know each other were doing these studies in these two separate countries, but they started doing the same thing, because they were interested in why they were seeing so many tobacco-related -- So many lung cancers in the United States and what it was related to.
So the way they started doing their studies is, they started going to hospitals. And they would find people that were suffering from lung cancer, and they would sit in these hospitals and, "Tell me about your history." And they would go and talk to these people about their history. And they would get all these histories together, and they would try

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to compare them: What is the same in these histories, and what's different? Is there something that we can isolate that we can figure out what's causing this lung cancer?
Well, Dr. Doll will tell you, it was a startling conclusion. He had no idea that the connection turned out

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to be what it was; it was -- They kept checking their numbers and going over them: Cigarette smoking is causing this lung cancer. They're wondering where it's coming from, saying, is there really a connection?

Meanwhile, Dr. Wynder and Dr. Graham are doing the same thing in the United States; they're also seeing there's a connection between this lung cancer and smoking. So what they do is they put out preliminary results. They wanted to do some more study, more analysis of this to make sure that it was really true, so they put out some preliminary studies where they say, we're starting to find this connection; we're going to do some more research.

What they did was actually some clever things. They went to adult twins where one would have one cancer and one wouldn't. And they would go through their history, because genetically they ought to be the same, and lo and behold, what they found is that the adult twin that had lung cancer generally smoked. The adult twin who didn't have it, didn't smoke.

They did another test. They went to doctors -- And checked on them on lung cancer. And they found that doctors who continued to smoke, had higher rates of lung cancer than doctors who had quit, weren't smoking anymore.

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So they started to see a picture -- It was really starting to come together, to jell. They knew that they had a problem here. And as time will go on, you'll hear that they became more and more convinced about this problem.

Well, you'll hear that the tobacco companies were also on top of this. They started to see this problem too. And, in fact, the man would worked for R.J. Reynolds, Mr. Grossman's client here, Mr. Teague, put out a document.

In 1953, it's entitled survey of cancer research, with emphasis upon possible carcinogens -- Carcinogens are the big word meanings cancer-causing agents -- From tobacco.

And he goes on to say: "Several recent well-controlled large-scale clinical studies on correlation of tobacco smoking with cancer of the lung have been made."

They were aware of the studies that were being done that were starting to show a relationship between smoking and lung cancer.

He goes on to talk in here about excessive and prolonged use of tobacco, especially cigarettes, seems to be an important factor in the induction of lung cancer.

This is the man who's head of research at Reynolds, the folks who made Winston cigarettes talking:

"The incidence of lung cancer is considerably higher among moderately heavy to chain smokers compared to the general hospital population without cancer.

"The occurrence of lung cancer in a male non-smoker is a rare phenomenon. If you didn't smoke, it was extremely

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rare that you got lung cancer.

"Tobacco seems to play a similar but somewhat less evident role in the induction of lung cancer in women."

Well, one of the things that happened in World War II, more women left home. They started working in industry, and they started picking up some of the same habits that men had, which was smoking on the job. Smoking was increasing among women; they're starting to see lung cancer among women as well.

96.1 percent of patients with cancer of the lungs who

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had a history of smoking had smoked for over 20 years. Long-term smoking caused 96.1 percent of the lung cancer they were seeing. This is what the tobacco companies knew in 1953.

Well, this sent a shiver, the evidence will be, through the tobacco companies. This becomes widespread information. The evidence will be that they knew they had the problem; people were going to move away from cigarette smoking if they knew that it could cause lung cancer.

So they decided to react to it. I want to take you back a little bit into time to 1954. I did some looking up.

Number one, Eisenhower was president back in 1954. The top song in that year, the rock-and-roll song, was "Rock Around the Clock" by Bill Haley and the Comets. Some of you probably don't remember that song. Some of us, unfortunately, are old enough to remember that song. But smoking was everywhere. If you were on a subway in New York, people smoked on the subway.

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In elevators, people smoked.

In lobbies of hotels people smoked. All restaurants, all bars, theaters. You go to a movie theater, people smoked. They had smoking sections a little bit later, but you could smoke anywhere you wanted in that theater. You would see this haze in a theater when they were showing the movie, and you could see the smoke haze through, through the light of the projector. Cigarettes were given away on the street corner: "Here, try these."

You go into a cocktail bar and see a pretty woman who says, "Free cigarettes for you?" That was the world of smoking in 1954.

It's also a different world on television. Back in 1954, the Tonight program -- I think Jack Parr was head of the Tonight program -- He smoked on the show. All of his guests smoked on the show.

Just like Jay Leno now, he's the equivalent of Jay Leno, except all the guests of Jay Leno would be smoking on the air.

The Today program, Dave Garroway, you probably don't remember that name. He's the Matt Lauer of today. Imagine Matt Lauer and Katie Couric sitting around and smoking cigarettes on the Today show. That's the way it was in 1954.

Huntley-Brinkley were the top news program back in 1954. They both smoked on the hair. Chet Huntley died of lung cancer, it turned out. But they both smoked on the air. That would be like Peter Jennings and Dan Rather

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smoking on the air. It was a completely different time. Over 50 percent of all men in the United States smoked cigarettes in 1954. More than one out of every two men were smoking cigarettes in 1954. It was the big thing.

So, tobacco companies decided to react to this situation.

How did they react to it? We just saw what Mr. Teague had indicated. They knew from the reports of Wynder and Graham, saying excessive and prolonged use of tobacco, especially of cigarettes, seem to be an important factor in the induction of bronchogenic cancer, essentially lung cancer. For Doll and Hill, smoking is an factor and important factor for production of carcinoma of the lung.

Mr. Teague had even talked about it. So did they tell the public, you know, this may cause you lung cancer?

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What we're producing may kill you? Did they tell the public that? No.

What they did was they got together on a cold day in December, 1953, all the C.E.O.'s, got in a boardroom, in the plush Plaza Hotel back in New York City -- Sat around at that table and designed a strategy to fight this battle. To fight the battle they said, "We can't do it on our own." But, so they went out and they hired Hill and Knowlton, a premier P.R. firm, from New York City, Park Avenue.

And they set up a group, the Tobacco Institute Research Group. I'll show the document to you in a second -- As a front group -- And they cloaked it with doctors, that they were going to tell the public the truth.

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And so what they decided to do, in January of 1954, is put on it a document called "The Frank Statement" -- Meaning we're going to be frank with you; we're going to tell you the truth. So what did they give the American public? To tell them the truth?

This is what they gave them. This is the document, this "Frank Statement" was printed in over 450 newspapers in the United States. Every major -- Basically every paper in the country ran this ad.

And this is the group they set up, Tobacco Industry Research Committee. 5400 Empire State Building, New York, New York. This happened to be in the same building that Hill and Knowlton.

Sponsored -- I want you to look at the sponsors.

Philip Morris and Company, Mr. Barron's client.

R.J. Reynolds Tobacco Company, Mr. Grossman's client.

And what did they tell the American public? Listen to the words: "We accept an interest in people's health as a basic responsibility -- Paramount to every other consideration in our business.

"The health of the American people is paramount to every other consideration in our business."

Doesn't that sound like profit? Every other interest.

"We believe the products we make are not injurious to health."

What was that based on?

Mr. Teague had just written a letter or written a

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document to R.J.R. telling them, you know, these studies out there saying that people who smoke cigarettes cause lung cancer. They say it's not injurious to the health. This was the start of a dramatic and incredible conspiracy to mid lead the American public.

We always have and always will cooperate closely with those whose task it is to safeguard the public's health.

The evidence will be in this case that they did nothing to safeguard the American public. And haven't to this day.

The statement goes on: Remember what Mr. Teague said? Remember what these incredible doctors had done, these epidemiologist had found?

Listen to this language: "Distinguished authorities point out that medical research of recent years indicates many possible causes of lung cancer."

No background; just say "many possible causes".

"That there is no agreement among authorities regarding what the cause is." Even though there are these two studies that have been put out by renowned scientists

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both in the United States and Great Britain.
That there is no proof that cigarette smoking is one of the causes -- Listen to that language -- That there is no proof that cigarette smoking is one of the causes. So they even say, there's no indication that smoking causes lung cancer. When their own internal documents are showing it, when these studies are showing it, they're telling the American people what: Don't worry about it. Nothing to

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worry about.
"That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of the many other aspects of modern life. Indeed, the validity of the statistics themselves is questioned by numerous scientists."
Didn't say who. But they claim the question.
That was what started, in 1954, the campaign of false information spread across this country.
And at that time, Mr. Lucier was four years old. So let's move ahead a little bit farther.
Let's move to 1957.
Mr. Lucier -- Between the sixth and the eighth -- Mr. Lucier is now seven. Mr. Lucier now picks up his first cigarette at age seven. He smokes his first cigarette at age seven. Both of his parent smoke; his father smokes Benson & Hedges; his mother smokes Kents, eventually. But both of them smoked.
But in 1957, a joint study group from the United States put out a report saying the evidence of a cause-effect relationship is adequate for consideration -- For considering the initiation of public-health measures.
In other words, study groups were now saying: "Listen, we should think about doing something about this. This is a major health concern at this point. We should think about getting the public involved."
Great Britain: Tobacco smoking and cancer of the lung from the British Medical Journal, 1957. Relationship

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is one of direct cause and effects.
What does that mean? Big words to say we've decided there is a direct link now between lung cancer and smoking. "Direct". No question.
So how does Philip Morris react in 1959?
Two years after these events, Mr. Lucier is now nine years old. And, by the way, Mr. Lucier picked up a cigarette at seven, did not go back to smoking for awhile after that. I'll get to when he did it again, after age seven.
An opinion on cigarette smoking and cancer, from Helmut Wakeham. You'll hear this man's name several times. Philip Morris research and development, September 22, 1959: "Whether or not cigarette smoking is a cause of lung cancer is a matter of definition."
Sort of like saying, "What do you mean? You have to define what you mean by 'is'." You know? It's a matter of definition.
Put this is the other important section: "Add to this possibility the normal reluctance of the average human to change his habits, the conclusion is then quite apparent that the cigarette business will continue for a long, long time."
In other words, they knew humans weren't going to give up something like this if they developed the habit --

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Or "addiction" is really the term that should be used here -- They knew that if they could keep people smoking, keep them away from this fear of cancer, that they could

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keep them hooked for a long, long time.

Bottom line? Money.

This period of time was also interesting on television. Again, I am going to take you back in time, almost every show on television in this period of time was a cowboy show. I mean, we go through the names, Bonanza and Maverick and Cheyenne. And John Wayne was the big hero, you know, the big cowboy. Cowboys were everywhere. Davey Crockett.

Some of you were looking at me, like -- Davey Crockett was around during that period of time? It was all cowboy shows.

And every kid had a cowboy suit. Had a cowboy hat. He had his fake cowboy gun, and even some of them had boots and chaps. Some of you who are that old might remember some of those things. Never got into the coonskin cap, didn't like that at all.

But that was the time. And it was picked up -- It was a wonderful time for kids. It was like you were macho; you were the hero. You fought the bad guys; you chased them on horses and jumped on stagecoaches. And you were always beating up the bad guys, the macho image. This is what kids wanted to be.

Interestingly, people in advertising sort of picked up on that concept. This is the time for heroes for kids.

You know, back in the time, sports stars did commercials for tobacco companies, smoking their favorite cigarettes: New York Yankees, Brooklyn Dodgers. "I love

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my," whatever the brand is, smoking in the ads on TV.

They had doctors dressed up in TV commercials, saying "I love the taste of my Lucky Strikes, really good."

MR. GROSSMAN: Objection, your Honor.

MR. PAUL: Lucky Strike was not a defendant in this lawsuit.

MR. GROSSMAN: Nor was that the appropriate time.

THE COURT: Proceed.

MR. PAUL: The point is, there were a lot of commercials going on during this time about a lot of issues. And you'll hear that one of the defendants, Philip Morris, sort of hooked its wagon on that concept, which we later became to know as the Marlboro Man, out there in the West, riding the range -- Doing the good things, pounding in the posts, pounding in the -- putting up the barbed wire.

The other thing this case will show, that they knew who the advertising impacted. It impacted children, and it impacted them in a way to make it cool, to make it neat, to -- Macho -- yeah, even a little rebellion. You'll hear that the commercials were directed in that way. And it worked. The evidence will be, in this case, kids, young kids, young teens, were attracted to and began smoking -- Because of this.

Mr. Lucier will tell you that it had a dramatic effect on him. He remembers the Marlboro Man. He remembers how neat it seemed, riding the range and all the rest of it. You'll hear that that was a very big part of him switching over to Marlboros.

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Okay. Mr. Lucier by this time is about nine years

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old. Let's move ahead then to about 1961.

1961, Mr. Lucier and his family moved to St. Louis, they had moved from Tallahassee -- Actually, he was about six months old -- To Rochester, New York. And when he was 11 years old, they ended up moving to St. Louis, very big family. Ten brothers and sisters. Lot of kids in the family. A family that was really close, and enjoyed life and enjoyed being around each other.

One of the sisters that he was close to was a sister by the name of Therese. Therese and he, when he was age 11, 1961, started to sneak cigarettes from their father and their mother and started smoking. Not a lot, maybe a cigarette a day, maybe two a day -- Benson & Hedges and Kent, as I've indicated before -- But something that they would do, go into a room and hide and do that kind of thing. They would smoke a cigarette from time to time.

But the evidence will be that there were no warnings then, no indication in the media, to these kids in advertising, that it was dangerous to them -- to smoke cigarettes.

Cigarettes were everywhere. It was something that they got involved in doing.

But what did the tobacco companies know in 1961?

Remember, I mentioned Mr. Wakeham's note and name? I mentioned him before? Put out a document -- And I'll sort of move out of everybody's way -- Entitled, Tobacco and Health R & D approach: Defendants, research and development

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committee, by Dr. H. Wakeham, at a meeting in New York City on November 15th, 1961.

Remember, they said that they would get out to the public the dangers of smoking; they would get the information out to them, that they -- That there's no connection between smoking and cigarettes. All the things that they said in the Frank Statement, that -- The health of the American public is of paramount importance to them.

What did they believe inside? Evidence linking cancer and tobacco, based on two main points, statistical: Evidence that certain diseases are more prevalent among smokers than non-smokers.

Look at No. 1, lung cancer.

Bladder cancer, cardiovascular disease, heart disease.

In 1961, these associations suggest that smoking may be a causative factor.

What did that mean? Big words: The association seemed to indicate that's what causes those problems. Physiological tests in which animals treated with smoke condensate -- That's the material from the smoke -- Extracts or compounded therefrom, suffer from increased tumor frequency. They put the condensate, the stuff that's in the smoke, and they smeared it on the animals, and they got tumors as a result of it. Most tests involve skin-painting or injections on special strains of mice.

Smoke-inhalation experiments have failed to produce lung cancer.

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They tried to get the rats to smoke, but they didn't get lung cancer from it.

One of the words -- The evidence you'll hear, over and over, is controversy. There is a controversy about the issue of whether smoking causes any problems. You'll see it in 1961, in this same document: "The Cancer Controversy".

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Right at the top.
And then it gives definitions for you, carcinoma, sarcoma, talking about malignant growth. Carcinogen, which I talked about a little briefly about, tumor promoter, an ante-carcinogen. (reading)
And then they listed what in cigarettes causes cancer. This is Philip Morris in 1961.
Cancer-promoting agents in cigarette smoke:
Phenols, paraffin hydrocarbons, organic acid esters, fats, oleates, cholesterol. Benzene.
Half of them already impossible to pronounce.
Proflavine, ethanolamine. Turpentine. Many these are known cancer-causing agents in cigarette smoke. This was known in 1961.
This is a partial list of compounds in cigarette smoke also identified as carcinogens.
That is only a partial list of what they knew in 1961 was in cigarette smoke and caused cancer.
Chromium, cobalt, nickel, xylene. And a word you'll hear eventually come in this case, nitrosamines, a very potent carcinogen.
These defendants knew in 1961 that, not only did

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cigarette smoking cause cancer, they knew what in their smoke caused the cancer.
The evidence will be they never said one word about it to the American public. Not one. Their response was silence.
Let's go to 1962.
Mr. Lucier is now 12 years old.
And as far as any -- And if there was any question at this point about whether there was a connection between smoking, between smoking and lung cancer in 1962, the question was answered.
Alan Rodgman, R.J. Reynolds, Mr. Grossman's client, September 12th, 1962 -- "Obviously the amount of evidence accumulated to indict" -- Note the word; this is from R.J.R., from Reynolds; this is an internal document of the company -- "Obviously the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such an indictment is scant."
They knew, in 1962, it was overwhelming; they knew there was no evidence the other way. They never said a word to the American public. And Mr. Bible in 1998 said if one person dies from cigarette smoking, I would shut the company down.
They knew in 1962 that they were killing people. They never told anybody.
Age 13, 1963: Mr. Lucier is now in the 7th grade. He now smokes about five cigarettes a day, and he has switched to the red pack, Winston. He liked Winstons, he

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liked the flavor of them. No warnings, no notice, no nothing -- On the cigarette packs. In 1963.
He was smoking five a day. The only thing that was going on regarding Winston's was the jingle: "Winston tastes good, like a" -- Most people still can remember how to fill out the rest of it -- "Like a cigarette should."
In fact, what the American public was being told about Winston, not that they'll kill you, like Mr. Rodgman was talking about, they taste good, like a cigarette should.
Well, 1964, banner year for Mr. Lucier; he gets to go to high school. Now age 14.

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He's now smoking 10 to 12 cigarettes per day. Still smoking Winstons. But another potential blow came to the tobacco companies in 1964.

The blow is: The Surgeon General of the United States -- Remember this statement back here in '57? Joint study group said maybe there should be some initiation of public health measures?

Well, when they get to '64, finally the Surgeon General reacts; the Surgeon General puts out a report saying there appears to be evidence that cigarette smoking may -- Not "is" -- But may be hazardous to your health. "May". No warnings yet. Not yet.

"May be hazardous to your health."

Well, about three weeks after the Surgeon General put out that statement, the tobacco companies reacted. 1964, January 28th: George Weissman, chairman of the board of Philip Morris to Joseph F. Cullman III, president of Philip

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Morris.

Listen to the language here, ladies and gentlemen:

"We must, in the near future, provide some answers which will give smokers a psychological crutch and a self-rationale to continue smoking."

We got to give these people something that they can hang onto so they can keep them smoking.

Not: Let's put out the truth. Let's build a better cigarette. Why don't we do that? Let's build a better cigarette. Let's take out all the tar and the nicotine and all the carcinogens in our cigarette.

We've got to give our smokers a psychological crutch, something to hold onto, so that they keep smoking.

Well, what they gave them was a decision that we've got to put controversy out there. We've got to tell the public that there's a problem. With all this data. You can't really trust what the government's saying. You know, it was sort of that concept -- The evidence will be that the concept was put out there: Hey, this is your personal right. Don't let the government interfere with you. Personal choice. Don't let the government take away your personal choice.

That's all dealing with Americans, our experts will tell. You want the keep your personal choice, don't you? You don't want the government telling you something. The tobacco companies knew that; they -- That's a psychological crutch. Hold onto your person choice: "I love my Winston's."

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"I love my Marlboros."

"I don't want to give it up." They relied on that. That was this psychological crutch.

Unfortunately, for them, in documents -- By the way, all these documents that you're seeing have come out in the last four years. They were all hidden -- Until about four years ago.

MR. GROSSMAN: Your Honor, may we approach.

THE COURT: We'll take the lunch recess.

Please don't discuss the case.

1:30, have a nice lunch. Please don't discuss the case.

(The jurors depart the courtroom at 11:56 am.)

THE COURT: Okay, the jury is outside.

Mr. Grossman.

MR. GROSSMAN: Yes, your Honor. The last statement

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by Mr. Paul, there are all these documents that came out in the last four years, is both incorrect as a matter of fact and, secondly, is a reference to other litigation in the M.S.A. Many of these documents have been out a long time before that. The suggestion that they came out in other litigation or that they came out in the last four years, or the relationship of that to the M.S.A. is, with regard to many of these documents, false and also is prejudicial.

Now, I would ask that the jury be instructed to disregard the comments that these came out in the last four years.

MR. PAUL: Well, number one, I didn't use the term

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M.S.A. at any point; I never used the term settlement. I just said that the documents became available in the last four years, and you know that as well as I do, that these documents are available on the web site.

This is the first time that the public has had access to, if not all, some of these documents -- Whether or not the tobacco had --

THE COURT: Address your comments to me, please.

You made an additional comment that they were concealed.

MR. PAUL: Yes, they were concealed, your Honor.

MR. GROSSMAN: Well, that they were concealed is factually incorrect, and that, the suggestion that somehow they were ordered to be produced -- What is the implication of what he was saying?

It's pretty clear.

MR. PAUL: The implication, your Honor, is fraud. There was a fraud on the American public.

THE COURT: Is that all going to become part of the evidence here?

MR. PAUL: Yes, your Honor, absolutely.

MR. GROSSMAN: How can it become part of the evidence when and how these documents became available, and it is factually incorrect that all of these came out in the last four years?

THE COURT: You contemplate putting out evidence about that?

MR. PAUL: Yes. I have expert coming up in document

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production: These documents were not available to the public at large until the last four years.

THE COURT: Are you going to go beyond that?

MR. PAUL: No. I was done that point.

THE COURT: Mr Grossman?

MR. GROSSMAN: Most of those documents were shown in the Cipollone trial, I believe, in 1989. They were reported on in the New York Times and in print extensively.

THE COURT: You'll have an opportunity to make an opening statement. We'll resume at 1:30.

MR. PAUL: Thank you, your Honor.

(12:00 noon)

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THURSDAY, NOVEMBER 7, 2002
AFTERNOON SESSION.

The matter of LAURENCE LUCIER and LAURIE LUCIER, Plaintiffs, versus PHILIP MORRIS INCORPORATED and R.J. REYNOLDS TOBACCO COMPANY, Defendants, Case No. 02AS01909, came on regularly this day before the Honorable Steven H. Rodda, Judge of the Superior Court of the State of California, for the County of Sacramento, Department One at 1:30 p.m.

The Plaintiffs, LAURENCE LUCIER and LAURIE LUCIER, were represented by: GARY M. PAUL, Attorney at Law; ROBERT M. BROWN, Attorney at Law; and MARY ALEXANDER, Attorney at Law.

The Defendant, PHILIP MORRIS INCORPORATED, was represented by: GERALD V. BARRON, Attorney at Law; LAURA C. FEY, Attorney at Law; STEPHANIE A. SCHRANDT, Attorney at Law (not present); DEBORAH A. SMITH, Attorney at Law (not present); and ANNIE Y.S. CHUANG, Attorney at Law (not present).

The Defendant, R.J. REYNOLDS TOBACCO COMPANY, was represented by: THEODORE M. GROSSMAN, Attorney at Law; STEVEN N. GEISE, Attorney at Law; HAROLD K. GORDON, Attorney at Law; DANIEL J. McLOON, Attorney at Law; and ELIZABETH P. KESSLER, Attorney at Law.

(The following proceedings were then had in open court outside the presence of the jury.)

THE COURT: Ready for the jury?

MR. PAUL: Yes, your Honor.

THE COURT: Okay. Let's bring them in.

(Pause.)

THE COURT: Good afternoon.

Ready, Mr. Paul?

MR. PAUL: Yes, your Honor. Thank you.

We had gotten ourselves up to -- and the years are going to start going a little bit faster, bigger chunks of years. We had gotten ourselves up to '62, '63 which is an important period of time. The evidence in this case is going to be that in 1963 Mr. Lucier at age 13 started smoking Winstons, as I think I've already indicated to you.

I already touched on the subject before of Marlboros, and in this case you're going to be hearing testimony about advertising campaigns and things along that line that I've touched on a little bit. The actual Marlboro man concept started I think in about 1955. If I'm wrong, I'm sure you'll hear that the date was wrong.

But the Marlboro man back then was a little bit different. There was a guy in business suits, all kinds of people in different occupations, and they normally had a tattoo on their hand, sort of a macho kind of look. Well, that concept changed in 1962. '62 is when they started the concept of the Marlboro man out riding on the range, horses, that kind of thing.

And what you'll hear in this case from the evidence is the sales of Philip Morris' product Marlboros basically skyrocketed after that campaign started, but it skyrocketed among a couple different groups, adults, but among children.

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All of a sudden there was a big increase in smoking Marlboros by teenagers and children during that period of time.

So the concept was freedom, being out on the range,

macho. All those kind of concepts you will hear from our experts tied in to what a youth desired, what they wanted. And you will hear that they knew it. Philip Morris knew what the sales were among teenagers. They kept track of it. They always knew what age groups were buying their cigarettes, whether they were 13, 12, 15. They had them down and they had the statistics. They were aware of children buying cigarettes.

The evidence will be, even though they knew it, they did nothing to stop it. And, in fact, they enhanced it. They worked on their cigarettes, engineered their cigarettes to make their nicotine more acceptable (sic) to children, to teenagers, to get them -- it's harsh -- to get them in and then they're stuck and addicted as time goes on. That's what the evidence will be in this case.

Now, we've heard -- well, I've discussed already the fact that this campaign, the strategy started about there must be other causes for lung cancer. We got to find other causes for it. And I've showed you some of the documents. I've talked about that already.

Part of that strategy you will hear also dealt with the subject of how to deal with personal choice. I already touched on this a little bit. You got to remember the sixties were an interesting time. For those of you who remember the sixties, it was very -- a lot of people didn't like the government. All right? They didn't like the government telling them what to do. It was an interesting time for those of us who had occasion to live through those times.

And so you will hear that the strategy was actually directed. They knew, cigarette companies knew that this is a way to keep people smoking cigarettes. It's your personal choice. Don't let the government tell you what to do. You have the right to decide what to do with your smoking.

But see, there's choices on both sides. Because the evidence will be in this case that the defendants made the personal choice, because their individuals, not to tell anybody about the risk, the harm or the death that their products would cause to the American public.

They had made a contract with the American public. The Frank Statement that we had talked about before, 1954, that was in contract. They never kept that contract. They violated that contract with the American people. That's what the evidence in this case will demonstrate to you.

So let's move along. 1966. Age 16. Thank goodness he was born on a year with a zero after it. It makes it a lot easier to figure out what his age was. He's now 16 years old. Mr. Lucier at age 16, 1966, moves from Winstons to Marlboros. He makes a switch like many other people did. They switched their cigarettes over to Marlboros.

I've already talked about the reasons that he did it, the vision, the macho, all the rest of it. We will have experts come in and testify in this court on the subject of advertising. We will bring in an expert, Dr. Marvin Goldberg from Penn State. He's a renowned U.S. expert on this subject of advertising.

He will tell you how advertising works and how you reach

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people and what the goals are of reaching people. And he will tell you that the advertising that was going on with Marlboros was to reach the youth market. It was to get them hooked, get them started on this subject and get them to stay in smoking cigarettes. He will talk to you about the effects of all this relentless advertising toward children and what impact it did have.

The evidence will be that it's not just happenstance that teenagers smoke. The picture is put out there for them to want to smoke; to be cool; to be something; rebellious; macho. That's what the evidence will be in this case.

Now, interestingly 1966 is the first year a warning ended up on a cigarette pack. 1966. The federal government required -- this was not voluntary. The federal government required cigarettes to put a warning on their label. They said something to the effect, Caution, smoking may, not is, may be hazardous to your health. These defendants knew that it was hazardous to your health. They have never voluntarily warned. They have never put their own warning on a cigarette pack or in their advertising.

MR. GROSSMAN: Objection, your Honor.

THE COURT: Sustain. That last comment is stricken.

Proceed.

MR. PAUL: They have never warned the American public about the dangers of their cigarettes. So Mr. Lucier will tell you.

MR. BARRON: Your Honor, for the record, we need to object to the never period. You made a ruling on, I think,

this issue.

THE COURT: Approach the bench.

Please don't overhear this conversation.

(The following bench conference was then had.)

THE COURT: Labeling, the warnings after 1969.

MR. PAUL: All I'm saying is they -- they've never warned. I said never warned the American public. I didn't say anything about putting it on their packs.

THE COURT: You're going to have to be reasonably --

MR. BARRON: I don't want to interrupt, Judge.

THE COURT: I know.

MR. BARRON: I can't waive my objection to that.

MR. PAUL: No. I understand.

MR. BARRON: Okay. All right.

MR. GROSSMAN: I'd ask that the jury be admonished because he raised it again and the objection is sustained.

THE COURT: I've sustained it. I've stricken it. That's as much as I'm going to do.

MR. PAUL: All right.

(Bench conference concluded.)

MR. PAUL: Let me be clear in what I'm talking about here. What I'm talking about is -- I'm not talking about warnings on packs or labeling or anything like that. I'm talking about the companies actually coming out publicly, writing papers saying to the public, these are the dangers of our products. I'm not talking about labeling.

MR. GROSSMAN: Objection. May we approach again, your Honor?

THE COURT: All right.

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Don't overhear our conversation, please.
(The following bench conference was then had.)
MR. GROSSMAN: Your Honor, after 1969 plaintiffs cannot argue that the defendants had any duty to warn by any other means, and to suggest otherwise violates the -- violates preemption as it has been clearly understood since Cipollone.
MR. PAUL: This is a fraud case. This is outside --
THE COURT: You have to put it in that context. I agree with that.
MR. PAUL: Thank you, your Honor. I will.
THE COURT: Okay.
MR. PAUL: I will make that very clear.
(Bench conference concluded.)
MR. PAUL: Just so I'm clear, I'm claiming they fraudulently, with malice aforethought, intentionally did not warn the American public about the dangers of their product. That's what we believe the evidence will be in this case, that it was a fraud on the American public -- on the American public.
Now, by the time this warning came out Mr. Lucier was already addicted to cigarettes. He had been smoking cigarettes, actually started at age seven, smoking them forward from age eleven on. Age thirteen he was smoking Winstons, about a half a pack a day on a regular basis. And by this time he's getting into high school, he's up to about a pack a day of cigarettes.
He was addicted by the time this warning came out on

cigarettes. And he will tell you it had no impact on him at all because he just didn't believe. He believed that the cigarette companies wouldn't put out a product that would harm somebody. He believed them when they said there's no evidence to indicate that this product is dangerous.
So let's talk a little bit about addiction. You will hear a renowned expert on addiction, Dr. Neal Benowitz from San Francisco, who has done massive studies on the subject of addiction, what it is, how it affects people.
He will tell you that the addiction to cigarettes is not psychological, it's physical. He will tell you that the addiction is from nicotine in the cigarettes. He will tell you that cigarettes are a nicotine delivery device. He will tell you that the nicotine is equivalent to an opiate, like morphine. He will tell you that it's not the taste that people desire, it's the hit that they desire that they get from smoking nicotine.
He will tell you that it is a very difficult habit to break. Some people can. Put a gun to somebody's head and say, don't smoke anymore, they'll stop. But if you're given a choice, he'll tell you people will take that choice rather than to give up what they enjoy, which is the hit, the nicotine, the drug.
The evidence in this case is that my client is a drug addict. The evidence in this case is that these defendants are drug dealers. And the drug is nicotine. And do they know that it's a drug? Of course they know it's a drug.
Let me show you a document. Nope. That's not the one.

1972 document. Philip Morris. Delivered at a conference, tobacco research conference. I've highlighted the section.
Think of the cigarette pack as a storage container for a

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day's supply of nicotine. Think of the cigarette as a dispenser for a dose of nicotine.

This is what Philip Morris believed in 1972. They knew they were a nicotine delivery device. That's what they were delivering. They knew it addicted people, and they knew it hooked people and that people had difficulty getting ready (sic).

"It's readily prepped for dispensing nicotine."

That's what they believed their cigarettes put forth.

But they didn't stop there. They engineered cigarettes to make them more addicting. They added urea, basically comes from urine, and it burns and it becomes ammonia. It's added to cigarettes. And when it burns and becomes ammonia it heightens the effect of nicotine.

They add licorice and chocolate to cigarettes. Why add licorice and chocolate? It opens the lung passages so you get more into the lungs.

The purpose is to addict and to keep you on the product. This is what they knew in 1972. They knew it before 1972. And they knew they could get people hooked. As they said in those previous documents, once people are on something they'll keep doing it, doing it over and over, and it becomes a long-term benefit to cigarette companies.

You're also going to hear from another expert, Michael

Cummings. Mr. Cummings operates a center for stopping people from smoking. It's attached to a cancer hospital. So the people who come to see him are motivated, and highly motivated, to want to stop smoking.

And he will tell you even though they're highly motivated he sees the same failure rate that he sees among the general population. Over 90 percent can't stop. They have the desire to go back to smoking cigarettes.

He will tell you about the history of having to deal with the strategies, the different ways that he's tried to accomplish to get people off of this nicotine habit and how difficult it is to accomplish it in the everyday world for the average person who's become addicted to this product.

Is the product addicting? There's no question.

Philip Morris finally in 2000 put on their website -- you can call up their website, don't do it, but if you were not in this case you could call up their website and you would see that they say:

A. Cigarettes are addicting.

Not habit forming. They're addicting. They admit it.

B. They say cigarette smoking causes lung cancer.

C. Cigarette smoking causes heart disease.

Cigarette smoking causes other health risks. It's on there website. But it wasn't put there until 2000.

Reynolds, Mr. Grossman's client, has never admitted any of those statements. Philip Morris knows the truth. They know it's addicting.

1966 was the first year that Mr. Lucier had to stop

smoking. He entered a seminary. He wanted -- or thought about, at least for a while, becoming a priest. When he entered the seminary you'll hear for the first semester he wasn't allowed to smoke. He wasn't allowed basically out of the dorms. He wasn't allowed off the campus. He was stuck. And one of the rules was you couldn't smoke. So for the first semester the evidence will be in this case he didn't smoke.

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Christmas vacation, he went home and he smoked a pack a day.
MR. GROSSMAN: Your Honor, objection. May we approach?
THE COURT: Yes.
THE COURT: Please don't overhear our conversation.
(The following bench conference was then had.)
MR. GROSSMAN: We move for summary judgment. And the statement of facts supporting that of uncontested facts, we said that Mr. Lucier stopped smoking for a seven-month period. That seven-month period included the Christmas break. Plaintiffs agreed. They did not contest that. They cannot put on evidence to contest what they've already admitted.
MR. PAUL: Okay. Then I'll correct it.
(Bench conference concluded.)
MR. PAUL: Mr. Lucier stopped smoking for seven months while he was in the seminary. As soon as he left the seminary he went back to his one-pack-a-day habit that he had had right before.
So let's move our attention then to 1969. After leaving the seminary -- he stayed there for about one year -- he went back into regular school in Saint Louis and eventually started at Saint Louis University where he stayed for about one year.

In 1969 he's 19 years old. He moves to from Saint Louis to San Diego to be with family, and then he eventually moves to the Phoenix area, stays for a while. And then he goes to New Mexico from about the mid-seventies now and stays on a ranch in New Mexico for about three-and-a-half years where he sort of gets to live the life of a Marlboro man.
Remember the hair in the seventies? It's not real clear because of the light that's on it, but he's got a lasso in his right hand and he's standing out there with some horses in the background.
He stayed on this ranch for about three-and-a-half years. After that three-and-a-half years he then returned to the Saint Louis area, and he's still got the one-pack-a-day habit of the Marlboros. He returns to the Saint Louis area and goes back to college -- this is toward the end of the 1970s -- to complete his degree work.
In 1970 he becomes age 20. 1970 is also an interesting year from the standpoint that in 1970, as I recall, all advertising of cigarettes on television was banned. Cigarette commercials went off of television.
But in 1971 -- remember all the documents we've gone through -- on Face the Nation, it's still on the air, Joseph Cullman from Philip Morris in a transcript says: We do not believe that cigarettes are hazardous. We don't accept that. I believe they have not been proven to be unsafe.
This was the message that was being put out to the American public at large by Philip Morris in 1971.
See what they say in 1972. Response to what's called a

Consumer Reply.
"Despite all the research going on, medical science has not found any conclusive evidence that an element of tobacco" -- this is from Reynolds now, Mr. Grossman's client -- "that an element of tobacco or tobacco smoke causes any human disease."
This is in spite of the fact that in documents that I have demonstrated to you they were admitting that they knew there were problems with smoking and disease.
So in 1972, my client is now 22 years old. A proposal

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comes out of the Tobacco Institute, which is sort of the progeny of this group that started back on the Frank Statement, basically a front organization the evidence will be for tobacco companies, and it's called The Roper Proposal.

This is The Roper Proposal. May 1, 1972.

"It is my strong belief that we now have an opportunity to take the initiative in the cigarette controversy and start to turn it around.

"For nearly 20 years, this industry has employed a single strategy to defend itself on three major fronts -- litigation, politics, and public opinion.

"While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not -- nor was it intended to be -- a vehicle for victory."

Victory for what?

"On the contrary, it has always been a holding strategy."

Remember when I talked about -- the evidence will be this was a plan to keep people smoking, keep the controversy alive so that people don't start to believe what they might be hearing. So what do they say?

"On the contrary, it has always been a holding strategy consisting of creating doubt about the health charge without actually denying it."

We never did not it, we just say there's doubt out there about this health charge. That was their plan.

"Advocating the public's right to smoke."

Personal choice.

"Without actually urging them to take up the practice."

Three. "Encouraging objective scientific research as the only way to resolve the question of health hazard."

We already know from these documents they knew there was health hazards. So what are they talking about scientific research? Well, let's talk about scientific research. What were the tobacco companies really doing?

Philip Morris. Tom Osdene who was involved in their research department. This is known as the Levy memo. "Proposed study by Levy." This is from Dr. T. Osdene -- or to Dr. Osdene from Mr. Dunn.

"I have given Carolyn approval to proceed with this study. If she is able to demonstrate, as she anticipates, no withdrawal effects of nicotine, we will want to pursue this avenue with some vigor. If, however, the results with nicotine are similar to those gotten with morphine and caffeine" -- which some people are saying -- "we will want to

bury it."

If the results come out bad, bury it.

"Accordingly, there are only two copies of this memo, the one attached and the original which I have."

Why did they want to bury the information?

I'll show you another document. At one point in time Philip Morris bought a facility overseas to do research outside the United States in Cologne, Germany. Dr. Osdene has a handwritten note regarding that research.

It starts off: Ship all documents to Cologne.

Two. Keep in Cologne.

Okay to phone and telex. These will be destroyed.

Please make available File Cabinet.

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If important letters or documents have to be sent please send to home -- to his home -- I will act on them and destroy.

So when you do your research over there, send it to me, I'll destroy it. That is what Philip Morris thought should be done with research. Nothing about if we find something bad, let's tell the American public about it. Let's get the word out to them. It may affect their health. Nothing about that.

1976. Let's move forward. 1976. Mr. Lucier now is 26 years old. He switches to Merit cigarettes, a low-tar, a low-nicotine, allegedly, cigarette. He switched to it because he'd heard these rumblings about health, and they were advertising these cigarettes as having low tar and nicotine and he figured maybe that's a little bit healthier. Maybe I should switch to that kind of cigarette. And he tried Merits and he liked the taste of Merits.

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What the evidence will be is the low-tar cigarette was a total fraud and is a total fraud on the public. Because they are just as dangerous; they cause just as much illness in America; and the public is deceived about what is being accomplished.

What do we mean by that?

You're going to hear from a witness, Dr. William Farone, who was hired by Philip Morris in about the 1976 period. He was brought over from another company -- he has a Ph.D in chemistry -- where he had been involved in human testing and things of that sort. They brought him over, allegedly, to work on making a safer cigarette.

Well, when he got to Philip Morris and he started seeing what was in cigarettes he was astonished. He'll tell you this. He could not believe the number of carcinogens that were in tobacco smoke. He could not believe how much tar and nicotine was being delivered. And so he started to work on coming up with a safer cigarette.

He will tell you that he could have eliminated virtually all carcinogens from cigarettes, all nicotine, and all tar from cigarettes, and that he told Philip Morris that.

And in fact Philip Morris actually developed a no tar, no nicotine cigarette; it's called the Cambridge. But they never marketed it. They did put a Cambridge on the market, but they added tar and nicotine to it. They never forcefully advertised, pushed low-tar/nicotine cigarettes. They didn't want people to be weaned off of their product. They wanted people to be on their product.

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He found out some other interesting things. Filters that they put on cigarettes basically do nothing. He found out that, for example, in Japan, charcoal filters work. They actually found that in Japan people have a lower lung cancer rate than in the United States. But the studies indicated, interestingly enough, when people from Japan came to the United States and started smoking American cigarettes their lung cancer rates catch up with Americans.

There were things that could have been done to make it a safer cigarette. There were things that could have been done to make it better for the public. There was no benefit to smoking that outweighed the risk of the cigarette. The cigarette is a product that is defective. The evidence will be --

MR. GROSSMAN: Your Honor, may we approach?

THE COURT: Yes.

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(The following bench conference was then had.)
MR. GROSSMAN: Mr. Paul is now challenging the sale of cigarettes per se.
MR. PAUL: No, I'm not.
MR. GROSSMAN: He's saying the cigarette is a product that is defective. That is a violation of preemption. It's clear under the Lorillard against Riley case cigarettes as a product are legal to be sold.
THE COURT: You're going to have to rephrase this in some fashion.
MR. PAUL: I'm not saying that they shouldn't be -- wait a minute. Don't walk away from me, please. I'm not saying

they shouldn't be sold.
MR. GROSSMAN: You're saying --
MR. PAUL: Excuse me for a second.
People can sell defective products on the market. People do it all the time. There are automobiles that are defective, lawnmowers that are defective. That doesn't mean it's illegal. I'm just saying it's defective.
MR. GROSSMAN: Product defect is one of the --
THE COURT: The theory that you're presenting here in terms of the --
MR. PAUL: That's what -- okay. I see. Sure.
(Bench conference concluded.)
MR. PAUL: In this case we're going to be claiming that this product was defective, that it was -- didn't meet the requirements that it should have met under the law. I'm not here saying it's something that's legal or illegal. I'm saying here it's defective and that something should have been done to make it safer. If you have wheels that fall off of cars, that's defective. I don't think you should outlaw cars. Make them safer. Make sure the wheels don't fall off of them. That's all I'm talking about.
In the same way, we're pursuing negligence. We're saying if you know something may harm somebody you have a duty and an obligation to protect the person it may harm. And we're claiming the defendants didn't do that. They didn't take the steps necessary to protect the people that they knew their product would harm.
And we're claiming fraud, that they intentionally acted

in such a fashion to harm people.
I'm going to take this down because I can't see anybody behind that.
Okay. I know where I was. Let's go back and talk a little bit about low-tar cigarettes. How do they work?
Well, the way they get these tar readings is they put them in a machine. They stick a cigarette in a machine, and the machine puffs them and takes a measurement of the tar and nicotine. The problem is that it doesn't really measure the way people smoke for a couple reasons.
Number one, one of the ways that they cut down on tar and nicotine is they put little holes around the cigarette so that more air gets in so it sort of lessens the amount of smoke that's getting into your body. Where they put the holes is where you put your fingers. So when most people smoke cigarettes they put their fingers right over those holes, so you get almost the same hit you get off of a regular cigarette.
The second thing is compensation. You'll hear testimony

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about this. When people have gotten the nicotine urge, they need to get that dose. Just like they talked about in their memo, they need to get that dose on a daily basis, so they compensate.

What does that mean? So when they take a drag off a cigarette, instead of taking the drag they take off a normal cigarette, it's (indicating). They take a heavier hit on the cigarette. Go through more cigarettes. So what they end up doing is getting the same amount of tar and nicotine into their

system as if they were smoking a regular cigarette.

Do the tobacco companies know this? Absolutely. They've known it for years. But they put these cigarettes out, the evidence will be, with the implication -- the implication that these are healthier for you, these are better for you, when they know the evidence is directly opposite that.

Well, Mr. Lucier got caught in that trap. He's in that trap of smoking Merits, and he continued to smoke Merits from 1966 -- or '76 at a pack a day until the day he was diagnosed with cancer.

So let's turn our attention to 1977. By this time my client is 27 years old. The evidence will be that some of the companies, Philip Morris in particular, were starting to get concerned about their potential liability, or the potential risk to them, and they started trying to figure out ways to deal with this situation.

Because they knew that they had a risk, they put out a memo. March 21, 1980. From Dunn to Seligman.

Our attorneys, however, will likely consider (sic) to insist upon a clandestine effort in order to keep nicotine the drug -- is what they call it in their own documents -- in low profile.

Such acknowledgment, contend our attorneys, would be untimely. Therefore, all -- therefore, although permitted to continue the development of a three-pronged program to study the drug nicotine, we must not be visible about it.

They don't want to be visible that they're actually investigating this drug that they're selling to the American

public. So what do they do? They come up with subjects to be avoided.

March 31, 1980. Philip Morris document. Seligman to Spears. Lorillard director of research.

Subjects to be avoided. Developing new tests for carcino -- oh, it's a hard word. Whatever that word is. In other words, avoid developing new tests to demonstrate cancer. Don't want to do that.

Avoid attempting to relate human disease to smoking. Don't do any research that might relate smoking to human disease.

Avoid conducting experiments which require large doses of carcinogen to show the additive effect of smoking.

In other words, when we do our research, don't do any of this stuff because the result might be bad for us. That was the approach of Philip Morris in 1980 when my client is 30 years old and smoking Philip Morris cigarettes.

1979, Tobacco Institute puts out a study for the years 1964 to 1979. That's a 25-year period.

Tobacco Institute says, "Scientists have not proven that cigarette smoke or any of the thousands of its constituents as found in cigarette smoke cause human disease."

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I showed you a document from 1961 where they listed the carcinogens in cigarette smoking, yet when they talk to the public they tell a different story. They don't want the truth to get out.

1981. Philip Morris. Responding to the Surgeon General report. Now reports were coming out more often talking about

the dangers.

"It is our opinion that Philip Morris (or the tobacco industry) take a more aggressive posture to counterattack the anti-smoking movement."

The smoking movement was becoming stronger -- the anti-smoking movement becoming stronger. They needed to have some way to attack it.

Meanwhile, my client is now age 29 in 1979. He graduates from Saint Louis University, moves to Phoenix Arizona, becomes a controller for a company there. Eventually moves to Florida where he remains for about ten or eleven years working as a businessman and controller.

He eventually will move from Florida -- excuse me just one second -- back to Phoenix, stays for a brief period of time. We're now in the eighties. He's ages 30 to 40 in this period of time. He moves to -- back into California and moves to Sierra Summit Resort. He works there for about two-and-a-half years, and he eventually moves from there to the Bay Area.

1994. He's now age 44. He meets and he marries Laurie Lucier who is an attorney. A couple years after he gets married, his daughter Elaine is born, who is now six years old. He works in the Bay Area as a controller.

The evidence will be he felt that his life was in pretty good shape, but in 1999 it all came crashing down. He learned in 1999 that what he had been told by the tobacco companies was false; that he had a problem as a result of smoking cigarettes, although he's still not ready to accept it.

Let's see what the companies were saying in 1998, the year before he gets cancer. This is Geoffrey Bible, the person I had talked to you about before. I'll move over here so I'm not in the way, hopefully.

Question -- in testimony he gave.

And you do know that from 1954 right up to today -- up to today -- Philip Morris has never ever said smoking causes lung cancer.

Answer: I think that's a fair, accurate description. We have made our position very clear on it.

This is 1998.

Do you know how many have died as a result of smoking?

Answer: How many people have died?

Question: Died.

Answer: I don't know if anybody has died. I just don't know, no.

How about Reynolds? Andrew Schindler.

Question: Well, how many people died from smoking-related diseases?

Answer: I have no idea.

At any time since 1954, has R.J.R. said that cigarettes cause cancer?

Answer: No.

That's the head of the company talking the year before my client gets cancer, and two years before Philip Morris comes

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out on their website and says it causes cancer and it's addictive.

So what happens? It's June 20, 1999. My client's 49

years old. He has a pain, so he goes to the Santa Rosa emergency room. They start to probe and prod as they do in hospitals to find out why he's having this pain. In the hospital for about a week going through these tests, which he'll describe as more invasive as time goes on, biopsies, etcetera. The doctors come in and they tell him, you've got lung cancer and you got about two months to live. And we're going to start you on radiation and chemotherapy to see if we can hold it off, to stop it. And so he starts radiation and chemotherapy.

He stays in the area for a while but then he moves to Phoenix, Arizona to be closer to his family. He takes his family and moves to Arizona so that when things go bad he'll have people around. He moves to the Phoenix area and continues his chemotherapy there, and something great happens, he believes. The cancer appears to have gone away. The chemo and the radiation seem to have worked. His doctors say we can't seem to find it.

He's feeling pretty great about it. He'll tell you that. He thought maybe he had beaten it, he had beaten the big C. As John Wayne once said, I'm fighting the big C and I'm going to beat it. The big C ended up getting him. But Mr. Lucier believed that maybe he could beat the big C.

He eventually ends up moving back. He goes to work in Phoenix as a controller, stays there for a while, and then I think in about 2000 moves back to Northern California, comes up here to the Sacramento area and starts working as a controller again, making about $55,000 a year.

His life is back to normal, feeling great. Things are going terrific. And on January 7th, 2001, he's driving with his wife and his daughter -- he's age 51 now -- going to some kind of event, maybe a wedding or something, and all of a sudden he has a seizure in the car. His wife grabs the wheel and gets control of the car.

He gets into UC Davis and they said, You've got a brain tumor. They told him the lung cancer you had that you thought you had licked, it's spread to your brain. So they operate and they had him go through radiation. And Mr. Lucier even goes to Lourdes in France to try to get the cure. Being a man of faith, he thinks maybe that will help cure him. And he'll tell you, I thought maybe it -- I got cured. But the doctors tell him, you've got less than a two percent chance of living five years. They've told him if the cancer comes back (fingers snap), you'll be gone in no time.

The cancer goes into remission. He thought he had licked the big C back in 1999, but it was just in the bloodstream, lymph nodes, floating around and it landed in the brain. His treating doctors will tell you that there's no question -- and our experts who you'll hear from -- there's no question that his lung cancer was caused by smoking, and that there's no question that it was a primary site, and it's no question that the metastasis or the traveling to the brain was from the cancer in his lungs.

We'll have pathologists here to talk to you about that subject. It's a little deep for me. I'll let them do all the technical kind of stuff. There's no question in their mind

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that's what happened to Mr. Lucier.

Now --

MS. ALEXANDER: It's over there.

MR. PAUL: Okay. We actually have a medical drawing that you'll see again during the course of the trial which shows the mass in the right lung, the cancer in the right lung that was treated, and then cancer spread to the right side of the brain and that's where the mass was removed.

Like I said, you'll hear a lot of technical discussion about cancers, and I anticipate you'll hear things about oh, we don't know where that cancer came from or whether it's connected to cigarettes and all that, but his treaters know where it came from. His doctors know where it came from. And the experts that testify in this case will tell you where it came from.

So at this point in time Mr. Lucier waits. He doesn't work since he had the brain cancer removed. He spends time at home with his wife and his daughter. He'll tell you the one thing he worries most about is leaving his wife and his daughter. He lives day-to-day believing, hoping, that he's beaten this cancer, that knowing in the back of his brain that he went through it once, it's likely to get him again.

So he worries, and he's afraid. He has very little energy. He can sit maybe for a couple hours but then has to go take a nap to recover from it. You'll get to see him. You're probably going to see him maybe today, video clips of him that were taken at deposition. He's a different man than appeared in these pictures. This is a picture of him and his wife and

child in 1999 after he had had the lung cancer.

In this case you will hear about the impact that it's had on his wife. We talked earlier about this subject of loss of consortium in voir dire. You'll hear about us talk about the impact that it's had on her, how -- what she faces, what she's faced to this point dealing with his illnesses and his problems, the impact that it's had on their marriage and on their relationship.

But he knows in his heart of hearts that he has a death sentence. The only question, When? Doctors will tell you it's a death sentence. The only question is when. And the evidence in this case will be that these defendants had a choice. They had a choice. They could tell the truth and suffer the consequences. My client had a choice, and the consequence of his choice is his death.

These people had a choice. They could have prevented death in many people by telling the public, making safer cigarettes, doing what any responsible person with all this knowledge would have done under the circumstances.

They're to be treated, as the judge has indicated, like any person. So when you think about this picture, you think about what a reasonable, average person would have done with this same knowledge. What would you have done?

I think the evidence will indicate that the choice they made is a disastrous choice. They intentionally harm people. Their actions are reprehensible. These documents prove their complicity in a conspiracy, and Mr. Lucier and his family are but one of the victims of that.

Thank you very much.

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THE COURT: We'll take a ten-minute recess now. Please do not discuss this case.

(Recess.)

(The following proceedings were then had in open court outside the presence of the jury.)

THE COURT: There are some issues that we need to discuss?

MR. GROSSMAN: Yes.

MR. BARRON: Very briefly, your Honor. Yes, there is.

THE COURT: Okay.

MR. BARRON: I'd like to bring up something.

There are a few -- I'm objecting to the section of some closing remarks by counsel in his opening statement.

There are few bright lines I know between opening statement that is appropriate and argument that is inappropriate for an opening. There are few bright lines even at the end of the case as to what is permissible argument and impermissible argument.

Here, this line was crossed clearly for the former and clearly for the later in my opinion. The remarks included something along the lines -- I've asked the court reporter to find it -- ask yourself what a reasonable person would or should do, I'm not sure which it was, and then here's the key, "What would you have done?"

That is in essence inviting the jury to do what the law has always told them not to do, and counsel has made what in essence is "The Golden Rule" argument.

On top of that, it was impacted further when he went to what I would call, if not a bright line, a pretty fair -- pretty fairly well lit which was the line where he says, And their conduct is reprehensible and some other things.

The first one is obviously the most concerning. And I think, frankly -- not only of course do I believe the objection should now be sustained, but the jury should be specifically admonished to disregard that comment and be told why.

And I would site it, although I don't have the California citation, Love vs. Wolfe. I know the case well. There's a fairly famous and successful plaintiffs lawyer, James Boccardo, that is fairly well known for vigorous comments. And that case held that even though there wasn't an objection the comments by counsel in final argument crossed the line. And I really think we need we need to nip this in the bud.

THE COURT: Very briefly, Mr. Paul.

MR. PAUL: Well, your Honor, "reprehensible" is part of my burden in this case to show malice, oppression and fraud. I have to demonstrate that their actions were reprehensible, vile. I didn't even use the other terms that were in the instruction.

THE COURT: Okay. Well --

MR. PAUL: To demonstrate those causes of action, I have to make a showing that their actions are reprehensible.

THE COURT: I listened to that -- to those statements and I was concerned about them at the time they were made, frankly. It's not proper to ask the jurors to place themselves in a position of the parties. And that suggestion was made, but I

don't think it was really emphasized. And I think if I tell the jury something about that at this point it's just going to confuse them. So I recognize your objection, but I don't intend to do anything with respect to that.

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The other part about "reprehensible," there is a request for punitive damages here and there has to be a showing of malice, fraud or oppression. Reprehensible conduct fits within the scope of that, and I view that as no more than indicating that that has to be proved. I don't think that that was presented other than in passing reference to what has to be proven. It was not put in an argumentative way.

So I appreciate your concerns, but I don't think that at this point anything other than giving recognition to them is needed. And I will consider those thoughts, again, if and when I need to in the context of closing arguments.

Is there anything else?

MR. GROSSMAN: Your Honor, the only other thing was we had raised earlier the question of whether the reference to two statements in 1957 that were made at the request of Congress to Congress by the American -- by the National Cancer Institute and by the Surgeon General would be seen as a waiver -- and I don't know how it can, but in light of the argument I wanted to make sure -- could be seen as a waiver of -- of the rights that we have under Noerr-Pennington.

THE COURT: Mr. Paul.

MR. PAUL: Well, I'll just make the same comments I think I made earlier. I don't understand how you can use it one way to shield yourself from liability and on the other hand try to

use it to -- I mean to keep someone from attacking you on liability and then use the statements to shield yourself from liability. I don't believe that's -- that's the basis of Noerr-Pennington. I mean that's basically what he's going to do. We're not liable because these statements were made.

MR. GROSSMAN: Noerr-Pennington is personal to Reynolds, it's personal to Philip Morris, and it protects them from having statements that they made in lobbying activities placed before the jury.

THE COURT: Let me ask you this. Is there any involvement by either of the defendants in those proceedings directly?

MR. GROSSMAN: I think that there was some testimony at those proceedings by at least one of the companies.

THE COURT: Does that relate in any way to what you intend to offer here?

MR. GROSSMAN: All I plan to offer here is statements by the Surgeon General and by the director of the National Cancer Institute that warnings -- that the public was adequately warned and they didn't believe that warnings were necessary or appropriate at that time. Those were the views of those two agencies.

THE COURT: Would you be offering anything from the defendants about those --

MR. PAUL: Yeah. I tried to get in a document where the defendants said, Don't warn, and now he's going to use a document that says this agency, the NCI, which is a separate organization, said we don't think there's a need to warn. I

can't get in the fact that they tell them not to warn, but he's going to use the same thing against us.

THE COURT: Well --

MR. PAUL: It's on the same -- exact same subject they objected to me bringing it up.

MR. GROSSMAN: Mr. Paul has made the argument that we didn't warn, and I'm making the argument that community

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standards at that time did not require a warning both because the public was adequately warned and because warnings of that kind were not known -- never occurred until --

THE COURT: Okay. I'm not going to give you a provisional ruling on this. You can proceed at your peril.

MR. GROSSMAN: Okay.

MR. PAUL: I do have one scheduling conflict I need to bring to the Court's attention. We had anticipated having Dr. Benowitz tomorrow to testify. Your Honor, you've been through enough of these trials, I'm having witness problems. He can testify tomorrow, but if he's not done tomorrow he can't come back for a number of days.

Now, I've raised this -- I think I told somebody -- I thought I told counsel about it. Their concern, of course they'd like it to go straight through. But the problem is that if I don't put him on tomorrow I'm not sure when I can ever get him back into the courtroom. So I don't know how to deal with this. I'd like to start with him tomorrow if I could.

THE COURT: How long do you expect his testimony to take from beginning to end, including cross-examination?

MR. PAUL: Well, the only -- I have a feeling for it

based on one-defendant cases. I don't have a feeling for two-defendant cases. So I'm not sure how long two defendants will take in cross-examination. I know he took I think a little bit over a day --

MR. GROSSMAN: When I deposed him.

MR. PAUL: Breaking it up, you're not opposed?

MR. GROSSMAN: No. I said I deposed him for over a day in this case.

MR. PAUL: That's what I'm saying. So I have a feeling he's probably going to go into a second day.

THE COURT: Okay.

MR. PAUL: And so he would probably have to come back anyway, but he can't come back the following Tuesday. That's the problem.

THE COURT: Well, when can he come back?

MR. PAUL: Well, I'm trying to work other people around. I can probably -- I'll try to fit him in anytime I can in the scheduling.

THE COURT: Let me say at the outset my view about these things is that it's difficult to schedule witnesses, we should do whatever we can within reason to accommodate witnesses and -- but I don't want to do that to the prejudice of any party, obviously. So it might be the way to do this, would be to put on his direct testimony and then defer the cross-examination to another time.

MR. GROSSMAN: I think would be to our prejudice, your Honor. Dr. Benowitz goes to -- is the only witness being offered by the plaintiffs under stipulation who will address

the question of Mr. Lucier's addiction. For him to take the stand as the first witness, and before a weekend, with no opportunity for cross-examination --

THE COURT: I thought I was trying to help you.

MR. GROSSMAN: I understand.

THE COURT: Okay. So --

MR. GROSSMAN: I mean it sounds as though he can be here at any other time except for Tuesday.

MR. PAUL: No, no. That's what I'm saying, he cannot. That's my problem. I can't find a day to fit him in. I would

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do my best to try to find another slot where I can get him back for a half a day or something. But what -- I'm running into trouble. I can't have him here Tuesday. And I can't have -- and on the 14th as I understand it he starts rounds and he's basically out for the rest of the month because of rounds, so that's my problem.

I'm not trying to go into your time, obviously, but I've got to give him a call within about 15 or 20 minutes whether I'm going to bring him in tomorrow or whether I'm going to have to -- I'd like to bring him in tomorrow since -- he's in San Francisco.

THE COURT: Are we going to be ready to start first thing in the morning with his testimony? Are we going to finish the opening statements this afternoon?

MR. GROSSMAN: No, no.

MR. PAUL: That's my concern.

MR. GROSSMAN: My opening statement is as long as Mr. Paul's, which means unless the jury stays extra time we

won't finish even mine today.

THE COURT: We're not going to stay extra time.

MR. GROSSMAN: Well, then I'll have to break mine up.

THE COURT: How long will you take, Mr. Barron?

MR. BARRON: You know, my desire would be to keep it under an hour. Depending -- I haven't, you know, heard him. He's going to cover some material. I think I could do that.

THE COURT: What's the solution?

MR. BARRON: I don't think it could be as short as, you know, as 15 minutes obviously.

THE COURT: I'm not asking you to compromise the time. All I'm trying to do is resolve this issue.

MR. BARRON: Well, there --

MR. GROSSMAN: Your Honor --

MR. BARRON: I guess what I'd like to know is -- because I know something about Dr. Benowitz, and I'm going to take the primary responsibility in starting with him in the lead cross-examination. He works at UC San Francisco which is just down the road. He's up at Parnassus.

I don't want to inconvenience him, but I am concerned about having direct on a Friday and then cross-examination ten days later or something. That just isn't really fair. I don't -- you know, if they want to limit the time of the direct and we -- in some way and so that -- I'll limit my cross in some way, we'll get it done in a day, I'm willing to consider and discuss that with him during a break. But I don't think it's fair to have him, you know, put on a whole direct and then have a big lag of several days.

MR. GROSSMAN: Your Honor, if I --

MR. PAUL: Well, the way we're going -- I'm sorry. I don't even think we can -- it doesn't sound like I'll have him on direct for a day. I won't even -- I'm not even sure I'd get my direct done. If we're going to go another hour and a half, that leaves a half hour for him, that's an hour and half into tomorrow. The earliest it he would be on is, it sounds like, after 10:30 tomorrow, maybe quarter to 11:00. So I'm not sure --

MR. BARRON: And --

MR. GROSSMAN: Your Honor, if I could make a decision?

THE COURT: Yes.

MR. GROSSMAN: Plaintiff had suggested to us earlier in

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the week that they weren't sure whether Mr. -- whether Dr. Doll would go on first by videotape or Dr. Benowitz would go on first. They decided that because of -- because the schedule had been pushed back it would be Dr. Benowitz. They have Dr. Doll's deposition that they plan to use as their first witness anyway that can be used tomorrow without any damage to the plaintiffs.

As far as Dr. Benowitz is concerned, if he can come back for cross-examination, he can come back for direct examination.

THE COURT: Isn't that true? You can't get him back for a good stretch of time?

MR. PAUL: Well, but the problem is, as I understand it, his schedule means that he may not be able to come back until the end of this month at the earliest. That's my concern.

THE COURT: So you're going to defer his

cross-examination until that time?

MR. BARRON: That's the problem.

MR. PAUL: I think you can see by my face I'm really struggling with this. I hate -- I hate -- I just dislike having to deal with experts and their schedules. It's just -- it's very painful. I understand everything that is being said here. And if I could have him here on Tuesday, I would have him here on Tuesday.

THE COURT: Why can't he be here on Tuesday now?

MR. PAUL: As I understand it, he's got a conflict that has something to do with his employment that day. I mean these are being handled through my office. I've got goings and comings. I've talked to him briefly myself and he said, there is no way, Gary, I could be there on Tuesday. It just isn't going to happen.

MR. GROSSMAN: What about Wednesday, the 13th?

MR. PAUL: I can't do it Wednesday. The problem is then I start running into a conflict with another witness who's only got two days that he's available this month. So -- and his problem is a significant problem because he's acting as an arbitrator in a matter -- a national matter and he has to be available except for these couple days. So that's the kind of problem I'm running into.

I only have two experts that I have a potential conflict with and they're both running into the same conflict. I really don't want to take any more time. I've just got to get back to my office and tell him what to do because he was going to start driving over here very soon to get over here tonight.

THE COURT: Is there any way that he can put on limited testimony tomorrow morning which would lessen the impact of your --

MR. GROSSMAN: I don't think so, your Honor. And I'm ready to work out any witness issues with the plaintiff, but I can't work something out so that -- so that the jurors would go home for a weekend having heard the direct and not hearing the cross until some unknown date in the future.

THE COURT: Okay. We're going to take a break in an hour. We're not going to be able to resolve this issue with him right away. You try to work this out in some fashion, and if you can't then I'll make a call.

MR. PAUL: Can I -- I'm sorry. The problem I have is his schedule. If he's going to drive over here, he's got to leave almost immediately from San Francisco because of traffic. To get here by 7:00 o'clock, he has to basically almost leave now.

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THE COURT: If he's going to testify tomorrow he's got to make himself available for additional cross-examination no later than next week sometime.

MR. PAUL: All right. May I just make a quick call?

THE COURT: Sure.

MR. PAUL: All right.

(Recess.)

THE COURT: Mr. Paul, are you ready?

MR. PAUL: Yes, your Honor.

I talked to Dr. Benowitz. He indicates to me that typically his testimony takes at most three quarters of a day, that the direct normally takes less than a half a day. If we

started with him at let's say quarter to 11:00 in the morning, I would be done with my direct early in the afternoon, that would give the rest of the afternoon for cross to begin. So they wouldn't be going home with just the plaintiffs' version in their head, and he can come back he said next Thursday.

THE COURT: Okay. Let's bring the jury in.

(The following proceedings were then had in open court in the presence of the jury.)

THE COURT ATTENDANT: Please be seated and come to order. Court is again in session.

THE COURT: Thank you for being so patient.

Mr. Grossman.

MR. GROSSMAN: Thank you very much, your Honor.

May it please the Court, Miss Alexander, Mr. Paul, ladies and gentlemen. The first time I get to address you as the jury.

Before I begin to tell you about this case and about at least two of the parties, R.J. Reynolds and the plaintiff, Mr. Lucier, I'd like to introduce you to a couple of people who you haven't met.

Now, you've already met Harold and Liza. But here is Dan Donahue, who is the deputy legal counsel at R.J. Reynolds and senior vice president of the company. I want to thank Dan for putting his trust in me and allowing me now the opportunity to try this case.

I'd also like to introduce a couple of people here who are doing technical work. That's Melanie Roberts. She's being helped by Nancy Berardinelli over there. Charles Wright is

someplace.

And I'd also like to thank our rival, Philip Morris. As you heard in -- when we were picking the jury, and as you'll hear a good deal more as the case goes on, Reynolds and Philip Morris are rivals in the marketplace, and they're very different companies in many ways.

But here in the courtroom we've tried to the extent possible to cooperate, to speed up the trial, and to make the evidence flow smoothly. So I'm going to be addressing a number of issues today, such as, Mr. Lucier's medical condition, that don't have to be addressed twice. And we've agreed that I can discuss much of Mr. Lucier's medical condition, much of his background, so that it doesn't have to be gone over again and again. And I'd very much like to thank Philip Morris for that and for their cooperation.

Also, I'd like to thank you for serving on the jury. This is a great public service, but it's also an inconvenience. We all know what kind of an inconvenience it is and we thank you very much.

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Now, as we turn to the facts of this case and to the evidence that we're going to present let's consider for a minute what this case is about. It's not about whether cigarettes are safe. They're not safe. No one is going to tell you that they're safe. It's not whether even they can be a cause of certain kinds of lung cancer, like small cell cancer or squamous cell cancer. No one is going to take the stand to tell you that they cannot be a cause of that at least in some individuals.

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There have been population studies, as you've heard and you'll hear a good deal more, since the 1950s that have said that the risks of lung cancer, certain kinds of lung cancer, among smokers are much higher than the risks of population as a whole. That doesn't mean that there aren't questions that remain unanswered. Nobody knows why some people who smoke get lung cancer and others don't. No one can predict in advance which smokers will get it.

About one in ten regular smokers have a pack or more a day. After smoking a lifetime, typically into their seventies, which is the median age for onset of lung cancer of those types, they get lung cancer. That's higher, significantly higher, than the rest of the population. No one doubts those statistics.

On the other hand, no one can predict why -- who will get it, what type they'll get, and no one knows why people who don't smoke get it. No one knows the mechanism. No one can -- no one knows even today, although there have been advances, how at the cellular level smoke turns healthy cells into cancerous cells. There's been a lot of progress in that area in just the past couple of years, but the full mechanism still isn't fully understood or close to understood.

Nevertheless, no one is contesting that the most plausible explanation for the substantial increase in lung cancer, squamous cell cancer, small cell cancer, amongst others, is that smoking causes the lung cancer in those people. That's not to say that Mr. Lucier had lung cancer caused by smoking. Far from it.

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I'm going to tell the story of Mr. Lucier's disease at the end. I'm going to build up to it. But understand that we will show that Mr. Lucier did not have lung cancer caused by smoking.

Now, another thing this case isn't about is whether cigarettes ought to be illegal. We discussed that in jury selection. Every health risk that you heard about that Mr. Paul referred to the evidence will show has been known to the Surgeon General and the public health community for decades. It's been reported by the Surgeon General for decades.

But our Congress and our society have decided, notwithstanding the risks, risks of lung cancer, risks of other diseases, risks regarding addiction or dependency, notwithstanding those risks our society has decided to allow individuals the right to choose whether or not to smoke. That's not because cigarettes are safe, but because it's a matter of personal choice in our society.

Indeed -- could I have slide two, Melanie, please.

This is a statement from the Public Health Service, the Surgeon General's office.

If smoking is this bad why doesn't the government banned

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smoking? Few people believe the government should try to band smoking. Most believe the answer is to let the public know what the risks of smoking are and let every person make up his or her own mind whether to smoke or not.

That is our public policy.

Thank you.

And let me say that the role of government permeates every aspect of this case. I didn't hear much of it before, but it permeates every aspect of this case. Not only did the government decide in 1966 and then 1969 and then in '84 what warnings should be on cigarettes, but it decided where they should be on the cigarettes, the size of the warning, the warnings on advertising. It decided where advertising could be run and where it couldn't. It decided that in 1971 there would no longer be ads on TV, but they decided it could be allowed everyplace else.

The government has also decided how tar and nicotine are to be measured. Remember, you just heard a critique of tar nicotine measurements. The evidence in this case will show that the Federal Trade Commission made it a binding rule on these companies how to measure tar and nicotine in cigarettes.

You'll also find out that every one of the experts in the field, including plaintiffs' own experts such as Dr. Doll, measure tar and nicotine by precisely that method.

Are their variances in the ways people smoke? Of course there are. In fact, these cigarette companies when the FTC adopted its rules said you have to understand that the machine smoked method does not approximate the way smokers smoke because everybody smokes differently. They told the government that, but the government mandated those rules and the companies have to follow them.

Now, as you listen to this case on this and other matters ask yourselves, Are the plaintiffs challenging the defendants' conduct, or are they really challenging society's rules and the

government's rules?

This is not a suit -- this is not some kind of class action or aggregated action. This is an individual action by one person and his wife against two companies, not others. It involves specific periods of time, specific cigarettes, specific conduct, a specific plaintiff who had specific knowledge and made specific choices.

Could I have slide three, please.

This is Mr. Lucier's brand history. Now, as you can see the Winston period, which is the Reynolds period over here in green, and the evidence on this is not clear but perhaps one or two months in 1966 over here, is very small. It's a very small part of the whole. It's part of why I'm so thankful to Philip Morris for allowing me to go first and go ahead.

There's another period which is mostly Kent according to Mr. Lucier's testimony. Kent was not made by either of these companies. Kent is made by the Lorillard company. They're not here.

The only periods of time in this lawsuit are these periods of smoking. Of course, there's this gap in here which we're going to be talking a great deal about when Mr. Lucier did not smoke for seven months. That's after, by the way, Mr. Paul said that he was addicted.

Thank you very much.

This case involves only the parties before you. And

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you'll have an opportunity in this lawsuit to measure each of these parties. We will present before you the senior vice president of Reynolds for research and development. He'll take

the stand. You'll have an opportunity to measure him, to assess his credibility, to assess his sincerity and to assess the company.

Nothing I say about him by way of warm up is going to affect this. You're going to have your own opportunity to see him and to determine this country's -- this company's determination to try to make safer cigarettes if it can and to try to help people who smoke, to give them the best cigarettes that it can under the circumstances and to do the most research under the circumstances. You can make that assessment for yourself.

And you'll also be able to make an assessment of Larry Lucier. And we can't turn away from the fact that this is his case and his story. And what you'll find out -- and by the way, when I speak of Dr. David Townsend, who was the director of research and development of Reynolds, he's going to talk about responsibility.

Let me say right now Reynolds takes responsibility for its conduct. And as you'll see, it has acted responsibly and we accept responsibility for our conduct. It may be as this case comes out that you won't say that about everyone, but I think you'll say it about Reynolds.

Now, as to Mr. Lucier -- I don't see him here in this courtroom, although as you'll soon find out I deposed him just two weeks ago, and -- as well as a year ago. But let me say this, if for some reason the plaintiffs don't call Mr. Lucier to take the stand in this case, we will.

And what you're going to learn about Mr. Lucier is that

he's a bright and educated man who throughout his life was warned of the risks of smoking, warned by everyone, understood the risks. This is not someone who couldn't read a warning or couldn't read a newspaper or didn't watch TV. It's not anything like that at all.

This is a man who made decisions in his life, decisions to take risks with regard to smoking, with regard to eating, with regard to lots of other things in his lifestyle. He understood all those risks. He understood the risks that he was taking and he decided to take them. He did what he liked to do.

You'll also find out that Mr. Lucier attempted during the prosecution of this lawsuit to interfere with our efforts to get at the truth. He gave us incorrect and misleading information about his doctors. He gave us incorrect and misleading information about his medical history. And he even destroyed evidence after it had been requested, in essence subpoenaed, in this lawsuit, and I'll come to that story in a minute.

This is an opening argument. I told you when we selected the jury that I get only three opportunities to talk to you directly; when we talk with each other during jury selection; now, when I present what the evidence will be; and later when I sum up, and I try to be eloquent, in argument the evidence.

Right now, I'm not going to tell you what you should conclude or what I hope you will conclude, because the power is in your hands, you are the judges of the facts. Right now I'm going to point out the evidence, and I'm going to point out

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some areas of conflict in the evidence.

Here's one. Mr. Lucier you will find out was deposed about a year ago, a year and a half ago. His own lawyers were the ones who said that they wanted the deposition, and then we had an opportunity to ask questions, to cross-examine. And they said it was to preserve his testimony in case he died before trial.

And they asked him during that deposition questions about his awareness in which they -- Mr. Lucier tried to prove that he hadn't been warned of the risks of smoking by his family or others. I'd like to play you a clip of one.

Could we have clip number one, please.

(Videotape played.)

MR. GROSSMAN: Ladies and gentlemen, what you'll hear from his brothers and sisters is this. His brother David -- and I hope no one is offended by strong language -- his brother David and Mr. Lucier lived together in 1988 and again 1990, and they had a constant conversation. It went like this. David said about the cigarettes, "That shit will kill you." And Larry Lucier said in response, "Maybe."

You'll hear that when Mr. Lucier's mother died of a stroke the family -- the ten brothers and sisters as well as Mr. Lucier -- discussed the cause of her stroke, and it was the belief of Elouis, who is a nurse and a journalist, that her mother died of smoke-related injuries. That was distributed throughout the family, discussed throughout the family.

And you'll find out that Mr. Lucier's father who was a three-pack-a-day smoker stopped smoking in 1968 for health

reasons. So it will be up to you to decide which to accept, Mr. Lucier's testimony or that of his brothers and sisters that will be offered.

Secondly, you heard Mr. Paul say that he would prove that Mr. Lucier continued smoking the Merits made by Philip Morris up to the last -- up to the day when he was diagnosed with lung cancer. A pack a day he said up to the diagnosis of lung cancer in the summer of 1999. And, in fact, Mr. Lucier tried to offer that as well.

Let's have clip number two if we could.

(Videotape played.)

MR. GROSSMAN: We'll show you the medical records. Until the time that Mr. Lucier decided to bring this lawsuit he told every doctor -- both before he was told he was sick and after he was told he was sick -- he told every doctor, I essentially stopped smoking, cutting down to two or three cigarettes a day, months before I got sick. You'll decide which to believe, the medical records, what he told his doctors, or what he says under oath.

And then there's a question about warnings from doctors. And there's a question about Mr. Lucier's symptoms. Now, you'll hear testimony in this case -- I'll come to at the end -- that Mr. Lucier had fevers and night sweats for two years before he was diagnosed with cancer. Those fevers and night sweats are symptoms of certain kinds of cancer and other diseases, like infections, but not from lung cancer, and especially not from lung cancer of the types that are associated with smoking.

You'll also hear Mr. Lucier say that -- that he was not

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warned by doctors about the risks of smoking.

Let's play those clips if we can. Clips three, four and five.

(Videotape played.)

MR. GROSSMAN: Next.

(Videotape played.)

MR. GROSSMAN: In fact, as you'll see in the next clip he even denied seeing doctors in the two years leading up to his diagnosis of cancer.

Let's see that.

(Videotape played.)

MR. GROSSMAN: Well, in addition to seeing that testimony you're also going to see his medical records.

Could we have a copy of the medical record from Dr. O'Neil. And that's slide one.

Here's a medical record from Dr. O'Neil who we will call either live or by deposition at this case who saw Mr. Lucier within the two years preceding that. He set up a hepatitis screening panel to try to figure out what the cause of the low-grade fever that wouldn't go away was.

He advised Mr. Lucier to reduce his cholesterol in his diet, even though Mr. Lucier denies that anyone ever told him to do that, even though Mr. Lucier denies that anyone ever told him that he had a problem with cholesterol or fats in his diet. And he also advised him to discontinued cigarettes.

And you'll hear Mr. O'Neil's testimony and that of another doctor who saw him in those periods and who advised him

of the risks of smoking and told him to stop.

And your job as judges of the facts -- thank you -- your job as judges of the facts is going to be to weigh those competing bits of evidence. On the one hand, Mr. Lucier's testimony that no one ever told him of the risks of smoking, that he never went to a doctor, that no doctor told him of the risks of smoking, that no doctor considered his history of low-grade fever, and on the other hand, the testimony of his brothers, of his sisters, of his doctors, and in one case even with regard to his smoking history, of his wife.

Let me say that Mr. Paul used the word "lie" in his opening statement. I will never use that, referring to anyone in this case. You make decisions about credibility, and I leave it in your hands to determine who you determine to be credible.

Now, as we discussed in jury selection, we go last. That's because the plaintiffs have the burden of proof. And because we go last there are plenty of times in this case where you may hear things, such as the Reynolds documents that were shown to you before, and I'm going to discuss them in a little while, you may hear things that need explanation or that sound bad. Please wait. The judge will instruct you to wait until all the evidence is in before making up your mind. Please wait.

And you have an opportunity to take notes. Please don't get tired. When our case goes on, it's time to take notes just as much as when the plaintiffs' case is on. If it's -- if you're in the pattern of taking notes, which is purely a

personal thing.

Now, there was some discussion of design, and I'm going to discuss it a whole lot more, cigarette design. But before I come to discussing it more later, I'd like to go over some

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general principles so we're all talking on the same page.
Could you please put up slide four.
The first question. What are tar and nicotine?
I remember I asked this question in jury selection, no one raised his hand, and I said it will be explained in opening, I can't explain it now.
Here's what the evidence will show.
Nicotine is an alkaloid. It's a chemical that arises naturally in certain plants. There's small amounts of it in tomatoes and eggplant and tea, very small amounts, and there's a lot of it in tobacco. It's a natural-occurring substance. It's not something that's added to cigarettes the way caffeine is added to cola. It's rather -- it's something that is natural that arises in the product the way caffeine arises in coffee. It's there.
Tar is the combination of all the liquid and solid particles in smoke. You see what you -- it's what you see when you see smoke, liquids and solids. And if you catch them on a filter, for example, for those who smoke know that the filter turns brown, if you catch them on a filter, that's tar.
Now, tar -- basically nicotine when it's -- when a cigarette is burned makes up typically about one-twelfth of all of what would be the tar. But when -- but the number for nicotine is pulled out, it's separate. When nicotine is in the

tobacco it's naturally in the tobacco, and when the tobacco burns the nicotine goes into the smoke. And it's then absorbed into people's mouthes and lungs.
Second question. How do commercial cigarettes differ?
There will be no testimony in this case that if Mr. Lucier had smoked different cigarettes available in the marketplace, that he had smoked Viceroys or Lucky Strikes or Carlton or any other cigarette, that it would have had any -- any effect on his health such as to save him from what the plaintiffs say was a cigarette-related lung cancer. No one will offer that testimony, either the plaintiffs nor certainly the defendants.
Indeed, let me say this. Cigarettes are made throughout the world, and Reynolds studies cigarettes made throughout the world. They're made in every country of the world, from companies throughout the world, and Reynolds studies the design of those cigarettes.
And I can tell you and we will offer significant proof that no company in the world, and certainly no companies outside of America, have done more to try to understand smoke and have done more to try to reduce the risks of smoking, if possible, than Reynolds, and I frankly believe as well Philip Morris. No company.
And indeed, when you hear Dr. Doll, plaintiffs' expert testify, you'll hear him say that it's appalling how other countries have not done the research that have been -- that's been done here by cigarette companies.
Now, is there a safe cigarette? Simple answer. No. No

one has ever invented a safe cigarette. And no one, either from the plaintiffs or defendants, will suggest to you that one has. Not that companies haven't tried. Imagine how much money -- leave aside public interest -- imagine how much money anyone would have, including Reynolds or Philip Morris, or any inventor if he could invent a safe cigarette that smokers wanted to smoke. There would be a bonanza in that.

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And you can be sure that these companies have tried to invent a safe, or almost safe, cigarette that they could market as such. And they continue to try. But no one has yet invented a safe cigarette.

Did Mr. Lucier use his cigarettes as designed?

Every product on the marketplace, certainly every cigarette on the marketplace, has different design principles intended to try, if possible, to reduce the risk somewhat. And a filter on cigarettes is an obvious example. Just like the guard on the lawnmower is an obvious example for a lawnmower. You can imagine if someone took the guard on the lawnmower off and ran over his foot that he would not be using the product as intended.

Mr. Lucier tore the filters off his cigarettes. Talking about the filters on Merits is almost -- the cigarettes that he smoked for the last 20 years or so -- is -- is superfluous and unnecessary in this case because -- now Mr. Lucier says he tore them off only when he was in a bar and drinking. Others say that he tore them off a lot more often, whenever he was in a "devil may care" attitude. But Mr. Lucier who fully understood the risks of smoking decided that he liked to tear off the

filters sometimes, and he did.

Last of these. Were Mr. Lucier's cigarettes spiked with nicotine?

Ladies and gentlemen, naturally occurring tobacco as I told you has lots of nicotine. The evidence in this case will be that through a variety of processes these companies, Reynolds in particular, has reduced the amount of nicotine delivered in smoke very significantly over the years. Reynolds -- the Winstons that Mr. Lucier smoked have never been spiked with nicotine and the nicotine has never been enhanced by Reynolds.

Now, the idea of enhancing nicotine, which we discussed a little bit in jury selection, is one that you should understand a little bit about because you ought to understand where the idea came from. Reynolds experimented with it but never put it in commercial cigarettes that were available to the public.

Dr. Richard Doll, plaintiffs' expert, wrote letters to cigarette companies in the 1970s, and the Surgeon General of the United States in reports suggested the same thing, that cigarette companies consider adding nicotine to cigarettes because smokers smoke for nicotine, and if there were more nicotine in relation to tar, the idea was that the tar -- which is believed to contain the cancer-causing elements -- would be consumed less by the consumer.

Nicotine itself is not seen as a health hazard. It's what people smoke for, but it's not -- none of the experts relate nicotine to cancer. What they relate to cancer, what many of them relate to cancer is the tar.

So the idea was if you would change the proportion of tar to nicotine, which is typically ten or twelve to one, and make it five to one or four to one or three to one, people will take in less tar because they've got the amount of nicotine they want or less tar.

That's where the idea came from. It was an idea intended to develop a safer cigarette. It was an idea from the plaintiffs' own expert, and it's one that was found to be commercially unmarketable anyway.

Thank you very much.

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Now, Mr. Paul showed you a variety of documents before, and I'm -- I want to get to Mr. Lucier's story, but I want to go through this first. Mr. Paul showed you a variety of documents before. Three of them were Reynolds related. Others were public documents like the Frank Statement, which he said was a contract. Many of them were from the Tobacco Institute. He also mentioned that Tobacco Industry Research Committee which later became the Center for Tobacco Research called the CTR.

The evidence will show that Mr. Lucier neither saw nor relied upon any statement of the Tobacco Institute in his smoking conduct. I don't know who this case is about as presented, but I can tell you that it's about Mr. Lucier who says in his sworn testimony he never heard of the Tobacco Institute; he never heard of the Tobacco Industry Research Committee; he never heard of the Center for Tobacco Research.

And as to the Frank Statement, it was published in January 1954. Mr. Lucier was three years old at the time. It

was published once, once in its history. The first time Mr. Lucier heard of the Frank Statement was after he had brought this lawsuit.

Now, I could stop there, but to do that could give you a misimpression of this company, misimpression after all the plaintiffs said of this company's efforts to understand tobacco smoke and to reduce the hazards if they could, and to publish about it and to tell the medical community and the scientific community what it was finding.

So with your permission, I'm going to address now the science as it developed through time, because it's a developing story, the science of smoking and health, what the public was told about it, and Reynolds' response, including those three documents, a discussion of those three documents.

What you're going to see as we go through this is that the -- first of all, in terms of what society was told and what society believed, our society has always been of two minds about cigarettes. And I think many people will be surprised at how old this information is, how long people have considered cigarettes to be dangerous. Our society has always been of two minds about tobacco and cigarettes in particular, much like other products such as alcohol.

On one hand, society has decided that people want these products, and people do want those products. On the other hand, these products have been revised because of health reasons and because some people who start smoking as with other things can find it hard, and very hard, to stop.

Now, why don't we put up, Nancy and Melanie, I'll help

you, the first time line of events.

THE COURT: How about a short break?

MR. GROSSMAN: That's fine, your Honor.

THE COURT: We'll take just five minutes. No more than five minutes. Please do not discuss the case.

(Recess.)

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(Afternoon Session Continued at 3:45 pm.)
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THE COURT: Okay, Mr. Grossman.
MR. GROSSMAN: Thank you, your Honor.
Well, we'll do what we can with this chart.
I guess we can turn this off; they can't see it.
As Mr. Paul told you, the first real population studies that were done on smoking and health were done in 1950. One by Doll and Hill in England and the other by Wynder -- Wynder not "Winder" -- Wynder and Graham at Washington University in St. Louis.
But long before the first population studies were done, epidemiological studies were done. It was widely believed in the country that cigarettes caused disease and specifically cancer, and it was always believed that they

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were addictive, at least addictive in the way that people used that term.

Way back in the 1880's, when cigarettes started to become the most popular form of tobacco use, cigarettes were referred to as "cancer sticks", "coffin nails". And they were also referred to, because of the addictive type elements of them, as "little white slavers".

The -- You will hear in this case that Mr. Lucier, by the way, heard cigarettes referred to as "cancer sticks" and "coffin nails" when he was a child. And you'll also hear that he understood what cancer was, and he understood what a coffin was.

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By 1884, New York, where Mr. Lucier lived until he was 11 years old, required teaching of the dangers of smoking. By the way, you'll hear about this from Dr. Michael Schaller, who's a distinguished professor of the department of history, former chair of the department of history, at the University of Arizona and now holds a special chair there in American History.

By 1984, New York required the teaching of it, and by 1985, Missouri, where Mr. Lucier moved when he was 11 years old, required the teaching of the dangers of smoke. And you'll see the textbooks that were used in both states.

By 1900, the prohibition movement started in the country. Not well known now, perhaps, but the prohibition was directed against two products: Alcohol and tobacco.

Nationally, prohibition took place at -- With regard to alcohol, the whole country had a prohibition of alcohol for a period of time up to 1932, with the election of Franklin Roosevelt, and the amendment to the Constitution.

But more than a dozen states in the United States actually banned cigarettes -- I believe the only place in the world that ever banned cigarettes, in the early 1900's.

All of those were repealed, not because people believed that cigarettes were safe, but because our society believed that people had a right to decide whether or not to smoke. They had personal choice. They had free will, and they were entitled to exercise it.

Instead of prohibition, other states took actions to limit the sale of cigarettes.

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For example, Missouri, where Mr. Lucier says he started smoking -- And by the way, the incidence -- You've heard discussions that Mr. Lucier had a cigarette at seven and even the statement that Mr. Lucier started smoking at seven.

That story is that, as a kid with other kids, knowing they were doing something naughty, in order to do something naughty, a group of kids, with one cigarette, went furtively under a bridge someplace, and each took a puff. That's not starting smoking.

Mr. Lucier says that he started smoking when he was 11, and living in a place in Missouri -- And I'll get to that story in a moment in the next section of my opening. And we have no basis to test that, except his own testimony, by the way, nor do we have the basis to test the amount that he smoked when he was young, other than his own testimony.

In any event, when Mr. Lucier says that he bought cigarettes as a youth in Missouri, understand this: If the gas station where he says he bought the cigarettes sold him cigarettes, it was breaking the law. And he was breaking the law. And he knew it.

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By 1914, many big companies in the United States actually were so opposed to smoking that they wouldn't hire smokers. Henry Ford published a book, The Case Against the Little White Slavers -- About nicotine. He wouldn't hire a smoker at Ford.

General Electric wouldn't hire smokers. International Harvester wouldn't hire smokers. There was a

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tremendous anti-smoking movement in the country at the time.

1924, Readers Digest began a campaign, and it continued for three-quarters of a century on the risks of smoking, culminating in a very famous piece published, I believe, in 1952, called "Cancer by the Carton". Readers Di gest was the most popular magazine in America at the time.

Through all this period, there really wasn't any science behind it, but -- Up to 1950.

But, our country was organized around the idea that cigarettes were dangerous. Laws were based on that idea, and laws were particularly based on the idea that cigarettes were addictive.

Now, 1950 is something of a threshold; it is something of a watershed. Both of these saw a publication of two epidemiological studies, and because diagnostic tools for being able to diagnose lung cancer, it had changed.

You'll hear again, from the plaintiff's witness, Dr. Doll, that you can't trust lung cancer statistics before 1950 because we didn't have the tools to diagnose it. There were lots of cases that were diagnosed as tuberculosis that were lung cancer; they didn't want to open people up if they thought there was a problem with the lungs because they were worried about infection.

But as CAT scans and, other things were developed, doctors began to reliably determine lung cancers. The bronchoscope in particular, which you'll hear about, is critical.

The kind of studies involved here, the Doll and

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Wynder studies, so-called case-controlled studies, are epidemiological studies. I know some of you know what that term means, but let me just give you a little bit of background.

Epidemiology is a kind of nose count, scientific nose count. It compares the incidence of disease amongst an exposed population and an unexposed population.

There are different techniques for doing that, but that's what it is; it's a kind of statistical aggregation of counting, nose counting.

And the control study involved finding people in a hospital, in these cases about 300 with the disease, asking them, "Did you smoke?", and then finding three people who weren't sick, and asking them, "Did you smoke?", and comparing the number of smokers among those who had lung cancer and those who didn't. That's what the study is; it's a statistical study.

Mr. Paul said earlier that Dr. Doll was surprised when he found out, on the basis of the study that cigarettes were related to lung cancer.

Testimony will be that Dr. Doll suspected that road tar was the cause of the rise of lung cancer that they were observing, but the tests that he was conducting was for smoking. The hypothesis was that smoke causes lung cancer, and that's what the test was. That's what it was about.

In any event, the idea of epidemiology in 1953 was

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very new, and the idea that you could infer causation from statistics was not one that was widely accepted by

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scientists, particularly in America.

Now, what the scientists -- Most scientists at the time believed was that you can't define causation; you can't say that something causes a disease, unless you can define the condition that leads to the disease, that always leads to the disease. There are ways to do that, in a laboratory by experiment, say, by exposing myself to a lot of smoke. Mice or rats to smoke.

The -- If it's the same organ, and the same method of administration, and the mice routinely develop lung cancer, that would be a way of proving causation, according to science as it was understood by most scientists at the time.

Another way would be by knowing the mechanism. If you knew exactly how it happened, then you could say that there was causation.

But even if the statistics showed a very great difference in rates of lung cancer between smokers and non-smokers, scientists from the fifties at least and many long after, believed that the statistics couldn't prove cause.

Now, let me give you a few quotes, and this is slide five.

These are not from cigarette companies.

American Cancer Society, the National Cancer Institute, the Mayo Clinic and the Public Health Service in the fifties. E. Cuyler Hammond was the directory of the American Cancer society. He said in 1954 -- This is

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related to a different kind of test that I'll tell you about in a minute:

"Laboratory investigation of a chemical composition of tobacco smoke and the effect of smoke and smoke distillates on experimental animals have not so far yielded very definitive information of a convincing nature concerning the causes of lung cancer in the human population."

National Cancer Institute Director, the director in this area.

"It would therefore appear as though the association between cigarette smoking and lung cancer seems real. The significance of this association remains unestablished."

The test, the study, the statistical studies show that it was more common for smokers to have cancer, but he was saying that did not prove cause and effects.

Joseph Berksen, the most famous doctor at the Mayo Clinic at the time, in 1955 saying: "My thesis is only that it is unwarranted to concluded from them that a meaningful association already has been proved beyond doubt, as some writers have asserted, and appears to be widely accepted in the United States.

"Much less do I believe that causation has been established."

And then Sidney Cutler of the Public Health Service:

"There was disagreement as to whether the evidence concerning smoking and lung cancer are causally related. The relative portion of smoking, air pollution and

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occupational exposure to carcinogenic materials remains to be established."

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Now, this is exactly what you saw the "Frank Statement" say. This is from leading doctors in America at the time.

I don't think even plaintiffs would argue that that was fraudulent.

Thank you very much.

In 1953, Dr. Wynder, the same doctor who conducted the population study in 1950, conducted an experiment with painting the skins of mice. They shaved the backs of mice, and they painted on them a tar that had been accumulated from cigarettes, in great quantities.

And certain kinds of tumors arose on the backs of the mice, not the same kind of tissue as in the lungs, not the same kind of administration.

To scientists, as I'll come to in a moment, that didn't mean a whole lot.

But to the public, it was enormous. It was an enormous story, as was, by the way, the Doll and Wynder studies in 1950.

Could we put up the sort of Life magazine, this is slide six.

Life magazine was certainly one of the most widely read newspapers -- Magazines of the fifties, and had an enormous article, "Smoke gets in the News".

There's a picture, in the laboratory of Dr. Wynder, where they were collecting cigarette condensates on the

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backs of mice. Now these mice, by the way, were grown to be specially, specially susceptible to developing tumors, and they developed tumors with tomato juice too.

But this story got tremendous publicity and created a tremendous health scare, increased the health scare in the community.

Thank you very much.

I should tell you that even Dr. Wynder does not say that that proves that smoking caused lung cancer, and in fact, Cuyler Hammond, the head of the American Cancer Society, as I showed you before -- If you could put up slide seven -- Said material collected from cigarette smoke will produce cancer on the skin of a susceptible mouse if you keep up of the experiment long enough.

That's an important piece of information, but taken alone it doesn't prove a thing about the occurrence of lung cancer in human beings.

Thank you.

Now, to give you an idea of how widely this was disseminated to the public, the Gallup organization, the Gallup Poll took a poll in 1954, and asked people if they had recent reports that cigarette smoking caused lung cancer.

Ninety percent of adult Americans had heard recent reports that cigarette smoking caused lung cancer.

If you consider the history of Poland, that kind of awareness is unbelievable. As you're hear -- There were more people -- 90 percent is more than the number of people

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in America who could name the vice-president.

Now, in 1957, the American Cancer Society published another study, another population study, another epidemiological study, in which it showed a very strong association between certain kinds of lung cancers -- Squamous and small-cell lung cancer and smoking, which they said that smokers seemed to live about seven years fewer

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than people who didn't smoke.
That also got tremendous distribution.
George Gallup himself said that -- he took the poll -- that there was phenomenal awareness of this subject. And, indeed, not only did everybody know about the study, but this, long before the Surgeon General's report, 50 percent of all Americans believed that cigarettes cause lung cancer.
1957. Only 25 percent didn't. The other 25 percent said they weren't sure.
The public was at the head of the scientific community. (sic)
As you'll see, even in 1956, the National Cancer Institute was saying that the cause wasn't proven, and they continued to for awhile.
The question I would like to address to you now is: While this was going on, while the public was receiving all of these warnings -- By the way, sales of cigarettes were affected in 1953 by the Windham study.
What was Reynolds doing? What was the cigarette company doing?

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Could you put up chart eight, please?
Notwithstanding the arguments that you heard that Reynolds was sitting on its hands and not doing research and not sharing information with the community, the evidence will be as follows:
First of all, it developed a library of public information. And it shared information with the public health community and with the public as a whole.
In the early 1950's, Reynolds began to hire a staff, a research and development staff, to deal with the question of smoking and health. One of the first people hired was Claude Teague. Plaintiffs referred to him as the director of research and development, or the director of smoking and health.
He wasn't. He was a young fellow hired in 1953 and sent to a library to read public studies, not to do some private research, but to -- Sent to a medical school library to look up books and look up articles and see what was in the public health literature about smoking and health. This was the beginning, one of the beginnings of Reynolds looking into the smoking-and-health field because it had just developed.
And you saw during the plaintiff's opening -- As one of the three Reynolds documents that was put up, Claude Teague, a memorandum entitled "Survey of Cancer Research".
Would you turn on the Elmo, please.
This is plaintiff's exhibit, not mine, this is what he showed you on the big board before.

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He showed you several recent large-scale clinical studies on the correlation of tobacco with cancer of the lung had been made.
That was no big deal. Everyone knew that; the public knew that.
And indeed, this was not -- These were not studies made by Reynolds; these were studies that were in the public literature.
Here's the full copy of Dr. Teague's report. As you can see, his bibliography -- I'm sorry about this -- His bibliography was entirely public literature.
Not only that, his conclusion --

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MR. PAUL: Your Honor, I am going to object to this.
May we approach.
THE COURT: Yes.
Don't leave that in front of the jury.
(At bench)
THE COURT: Okay.
MR. PAUL: We've known since yesterday what documents were going to be shown. This document was never shown to us.
MR. GROSSMAN: I --
MR. PAUL: Excuse me; let me finish my comments.
They had the exhibit that I showed to the jury, the same thing that he just showed to them now. They've had that since yesterday, since noon yesterday. They knew what I was going to show.
Now they come in with, you know, an exhibit and

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saying, "Now I want to show another part of it." They should have told me yesterday; they should have told me this morning.
MR. GROSSMAN: I told him that I would use any documents that they referred to in their opening -- In the charts that they gave us. I'm not using any document that I didn't show them or that wasn't a document that they showed to the jury.
MR. PAUL: What I was given yesterday -- We got called at 10:00 o'clock --
THE COURT: Did you receive that document yesterday?
MR. PAUL: No.
MR. GROSSMAN: This is his document, not mine, he put up the chart of the document. I'm just putting up the document itself.
THE COURT: Okay. But that hasn't been shared, the document itself.
MR. GROSSMAN: I told him that we would use the document.
MR. PAUL: No, you did not.
THE COURT: Okay. Don't show that to the jury again.
MR. GROSSMAN: Okay.
(In open court)
MR. GROSSMAN: Ladies and gentlemen, the evidence will show Dr. Teague concluded in his 1953 article, or paper that was referred to by plaintiffs, that, in spite of observation, research and theorizing for the past 2000 years, a cause of spontaneous human cancer is still unknown.

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By observation and by correlation of clinical data, with occupation environment and the like, several agents causing occupational cancer have been discovered, the knowledge of how or why these agents act is very incomplete.
The evidence will show that that was his conclusion.
Now, the Reynolds scientists were free to think independently. And indeed they were encouraged to do so.
One of the most entertaining thinkers was Dr. Rodgman, who had another one of the documents, one of the three documents, two of the three documents, that the plaintiffs put before you in his opening.
Here is a copy of the plaintiff's chart that he showed you. I've highlighted some of it for you.
And I am going to need help with the tool too, I think.
Do you see at the bottom? It says, "The statistical evidence itself without contradictory data is irrefutable."

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That's the part that was shown to you in the plaintiff's opening, right there at the bottom in larger type.

But in fact -- Yeah, in fact, the full quote from that page -- Okay, thank you. Thank you.

You see, I put in red what the plaintiffs had shown you: "The statistical evidence itself without contradictory data is irrefutable." And that was said to be Reynolds' position.

But in context, here's what preceded that in the same sentence:

"Although the results from these 30-odd retrospective

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and prospective statistical studies cannot prove a cause-and-effect relationship between cigarette smoking and specific diseases, and although these results are not considered to be extrapolatable to the smoking population as a whole" -- The population studies are what they are.

As I've said, you may have to wait until the end to learn the context of documents.

Now, Dr. Rodgman had yet one other piece, the one other remaining Reynolds piece of those that you were -- That you were shown. And that's the same story.

The plaintiffs put it up, with a quote:

"Obviously the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such an indictment is scant."

What was the context?

"However, the evidence from an epidemiological, pathological, biological and chemical studies supporting the proposition that lung cancer is caused by or associated with cigarette smoke is paralleled by similar evidence supporting the proposition that lung cancer is caused by or associated with air pollutants. In some instances the evidence seems to be stronger in support of cigarette smoke as a causative or associated factor. In other instances the evidence seems to be stronger in support of air pollutants as a causative or associated factor."

In all of these, you'll have to wait until the end.

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And we hope to give you the context.

As I said, Reynolds scientists were free to publish, free to write independently and free to think independently, and they still are. And they don't all agree.

When Dr. Townsend takes the stand, you'll find out that not every Reynolds scientist agreed with every problem the same. There are some Reynolds scientists today who describe the best way to describe the relationship between smoking and health is as a risk factor.

There are others who would use the word "cause". They disagree; they argue among themselves. But they're free to think, and there's no company position imposed on them. They're supposed to be scientists, and that's what they are.

Now, let me say that the evidence will also show that the Surgeon General's report had cited to and praised the work of Reynolds' scientists, published work of Reynolds' scientists in the Surgeon General's report.

Let me have, if I may, slide ten.

1989 Surgeon General's report, and the 1964 Surgeon General's report -- Cited the published work in the published literature of Dr. Rowland, Rodgman, Schumacher,

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Cook, Roberts, Walker, Dube and Green, all at once. This isn't hidden work; this was published in the medical literature and the professional literature and was relied upon by the Surgeon General.

Furthermore, Reynolds and Philip Morris, along with the other major cigarette companies in the United States,

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put together in 1961, funding -- It was put together in 1961 -- An encyclopedia calls -- called Larson, Haag, H-A-A-G, and Simvet -- It was an encyclopedia of all the medical literature that had been published on smoking and health.

It was published by these companies, paid for by these companies, and relied upon by the Surgeon General in 1964 in coming to its landmark study, the first Surgeon General's report, and which, by the way, did not say that cigarette smoking did not cause lung cancer, but came to a conclusion that it did cause lung cancer in man.

The warning that Congress put on, that said cigarette smoking may cause lung cancer, in the Surgeon General's report in 1964, said it did cause lung cancer, and the evidence will show that.

In any event, the Surgeon General's committee praised and relied very heavily on what it referred to as "the Green Monster", and, by the way, so did Dr. Doll -- Referred to it and continues to refer to it in his work.

Now, as I've told you, Reynolds employees, scientists, are encouraged to be creative, are encouraged to think on their own, are encouraged to write and are encouraged to speak.

And one risk of getting that kind of encouragement, it's kind of like what we discussed during jury selection where the -- With the suggestion box.

If you tell people they can say whatever they want, think whatever they want and write whatever they want, some

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people are going to say some dumb things.

Some -- And some people did say some dumb things. Some people said some things that I really wouldn't defend.

But that doesn't mean they were company positions. That doesn't mean that they were company conduct.

As you look at these companies, and as you look at R.J. Reynolds, a different entity, all I ask is that you look at what it did. Look at the work it did, look at the work it published, and not what individuals may have said at one time or another. And as you see documents as they come up, other than these three, which is now -- You've learned about, I hope, and you'll learn about from the evidence as it's presented -- As you look at documents, ask yourself: Is it a draft? Is it a final document? Was it circulated? Did the person who write it have any authority to put it in effect? Was it written by someone at the company even or somebody -- Was it something written to them? Which company? Was it Reynolds? And, most importantly, was it ever acted on?

And even more important than that, did it -- Did it make any difference in Mr. Lucier? We haven't come to the Lucier story yet. But ask yourself: Would it have made any difference to Mr. Lucier?

Now, as I told you, there are lots of documents out there. Millions of documents.

That these were culled from, that these were cherry-picked from, and then as you can see, excerpted --

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And I believe the evidence will show -- excerpted in a
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manner that doesn't give a fair representation of the whole.
The reason there were millions of documents at Reynolds and because they were preserved. That can't be said about everybody in this case.
Now, you heard something about Mr. Lucier's computer during plaintiff's opening.
Let me tell you the story.
When we took Mr. Lucier's deposition last July, he said that he currently corresponded by e-mail with his ten brothers and sisters. "That's how he all talk to each other on a regular basis." And then we took the depositions of his brothers and sisters, and they said, yes, that's how we talk to each other.
They also said that, even though Mr. Lucier was saying under oath that he believed that he was going to die in a couple of months, that he had written them e-mails saying that he had been cured.
He also said that he had written e-mails about this litigation. And they also said that he they had passed e-mails for years about the risks of smoking.
So we asked for the e-mails from Mr. Lucier. We asked him formally, by the equivalent of a subpoena.
We got a response saying, there were no such e-mails. So we asked again. We know there are, because there's testimony about it. And they said they had been deleted from Mr. Lucier's old computer. Now, we can understand deleting them.
So the next thing to do was to get them from the hard
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drive. We asked for the hard drive.
And this is now about November of last year. And there was a lot of back-and-forth between the plaintiffs and the defendants, as we sought that hard drive. We had it keyed up to be considered by the Court -- Until finally, after months and months, in the late spring, the plaintiff agreed, by stipulation, to provide us Mr. Lucier's computer so that a specialist, a technical specialist, could go in and get e-mails, if they still existed on the hard drive.
Mr. Lucier was supposed to produce it in late June. He said that he was busy. He was on vacation in North Carolina.
Finally, he produced it in July. Well, he didn't produce it. He produced a different computer, but he didn't tell us.
We then filed a motion with the Court.
MR. PAUL: Your Honor, I think that's -- May we approach on this.
THE COURT: Yes.
Please don't overhear our conversation.
(At bench)
MR. PAUL: I don't mind him getting into "we tried to get it" and all the rest of it, but getting into motions and what the Court's ruling --
MR. GROSSMAN: Only way --
MR. PAUL: -- I just think it's far afield, and I don't think it's appropriate for an opening statement.
MR. GROSSMAN: Only way we found out that Mr. Lucier
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had destroyed the computer was by filing a motion, asking him to keep it. That's the only way.
MR. PAUL: He did not --

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MR. GROSSMAN: He did not tell us, even though he was asked -- As your Honor is familiar.
THE COURT: What more are you going to say about motions?
MR. GROSSMAN: Nothing more than.
THE COURT: You might end up being a witness.
MR. GROSSMAN: Okay, I am not going to say any more about it.
THE COURT: Okay.
(In open court)
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MR. GROSSMAN: The evidence will show that in April Mr. Lucier had destroyed his computer, threw it out, when he bought a new computer, even though we had asked for the computer months and months before. And even though he had agreed later to produce it.
The evidence will show that, when he did make a production of the computer, it wasn't the computer that he had used.
The evidence will show that he didn't tell us that the produced computer was a different one, until after our computer specialist made that determination himself. So not everybody deserves everything that's necessary for your determination.
And the evidence will show that there was an effort

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by Mr. Lucier to prevent you from knowing facts central to this case.
Let's put up the slide again, the proactive slide No. 8.
In addition to developing a library of information and sharing it with the public, Reynolds funded independent research. It did that both with other cigarette companies and alone.
Remember the "Frank Statement"? Said that the Tobacco Industry Research Committee would be founded? Well, it was.
The Tobacco Research Committee was a committee that simply funded money to scientists who were conducting independent research in the New England Journal of Medicine, the New England Cancer Institute, the Journal of the American Medical Association, and the other major publications in the United States.
There was an independent scientific board, headed by Dr. Clarence Cook, who had previously been president of the University Michigan -- and before that, University of Maine -- And included National Cancer Institute at various times -- And that board simply decided which proposals would be funded, and they gave money to scientists who did the research independently and then published it in the major journals.
Now, the research was all published, and it made significant advances in the understanding of mechanisms of lung cancer and emphysema and other diseases.

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Could we have slide nine, please.
These are among the grantees of the Tobacco Industry Research Committee, later known as the Center For Tobacco Research.
These five people won Nobel Prizes in medicine.
This was not work of an insignificant nature. It was not work conducted by the tobacco companies, but it was funded by the tobacco companies.

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As part of what Reynolds and others believed their obligation to be, tried to find out -- Not a legal obligation, but their own belief to try and find out and help solve this issue.

THE COURT: We are going to take a break now.

MR. GROSSMAN: Okay.

THE COURT: Okay. We are going to take the evening recess. Before you stand up, just a couple things to remind you about.

Remember, do not discuss the case with anyone. Don't permit anyone to discuss the case with you. Avoid any media reports or accounts of anything relating to this trial. Avoid anything that may be in any way associated with the subject matter of this case.

I'm also advised you not to form or express opinions in the case. All that means is keep an open mind.

You won't be in a position to form any opinions until you've heard the case in its entirety. We'll come back tomorrow morning at 9:00 o'clock.

Now, I know some of the alternate jurors are having a

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little bit more difficulty than others in seeing everything that's going on. When we get the witnesses on the stand, that may become even more of an issue, so maybe the alternate jurors can kind of decide how you want to sit. You can rearrange yourselves so that everyone can have a good opportunity to see. And hear.

Have a nice evening; we'll see you tomorrow morning at 9:00 o'clock.

MR. GROSSMAN: Good night.

(The jurors depart at 4:30.)

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THE COURT: Okay, we'll see you in the morning.

MR. PAUL: Good night.

MR. GROSSMAN: Good night, your Honor. Thank you.

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